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ABSTRACT

This document provides a side-by-side comparison of Virginia regulations governing special education programs, the Virginia Comprehensive Services Act, and the federal 1997 Amendments to the Individuals with Disabilities Education Act of 1997. Differences and similarities are illustrated for sections relating to: (1) definitions; (2) authorization, allotment, use of funds, and authorization of appropriations; (3) state eligibility; (4) local educational agency eligibility; (5) evaluations, eligibility determination, Individualized Education Programs, and educational placement; (6) procedural safeguards; (7) administration; (8) preschool grants; and (9) infants and toddlers with disabilities definitions. Appendices include the full text of the three sections of the Individuals with Disabilities Education Act relating to findings and purposes, state eligibility, and local educational agency eligibility. (CR)

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ED 427 462

EC 307032

SUPPLEMENT

Comparison of Virginia Regulations Governing Special Education Programs and IDEA Amendments of 1997

Virginia Department of Education
August 1997

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Comparison of Virginia Regulations and IDEA Amendments of 1997

OVERVIEW

The attached document is to compare Virginia regulations with the IDEA Amendments. As a result it does not include every section of the IDEA Amendments of 1997 and should not be used as a replacement of the IDEA Amendments in its entirety. The document includes the following material:

- *Regulations Governing Special Education Programs for Children with Disabilities in Virginia* effective 1994 (State Regulations) - left column — pages 4-136
- *Comprehensive Services Act* (one section of the *Implementation Manual*) - left column — pages 137-138
- *Individuals with Disabilities Education Act Amendments of 1997* (IDEA) - right column — pages 4-138

  Part A: *General Provisions.*

    Sec. 602 Definitions

  Part B: *Assistance for Education of All Children With Disabilities.*

    Sec. 611. Authorization; Allotment; Use of Funds; Authorization of Appropriations *(some subsections)*
    Sec. 612. State Eligibility *(most subsections)*
    Sec. 613. Local Educational Agency Eligiblity *(most subsections)*
    Sec. 614. Evaluations, Eligibility Determination, Individualized Education Programs, and Educational Placement
    Sec. 615. Procedural Safeguards
    Sec. 617. Administration *(one subsection)*
    Sec. 619. Preschool Grants *(few subsections)*

  Part C: *Infants and Toddlers with Disabilities.*

    Sec. 632. Definitions *(Part C - one subsection)*

- Appendices:
  A - IDEA Amendments - Sec. 601. (c) Findings and (d) Purposes — pages 140-145
  B - IDEA Amendments - Sec. 612. State Eligibility — pages 146-159
  C - IDEA Amendments - Sec. 613. Local Educational Agency Eligiblity — pages 160-169

OVERVIEW Continued

IDEA Amendments Sections Not Addressed or Included are:

- Part A: *General Provisions.*

  Sec. 601. Short Title; Table of Contents; Findings; Purposes *(some subsections)*
  Sec. 603. Office of Special Education Programs
  Sec. 604. Abrogation of State Sovereign Immunity
  Sec. 605. Acquisition of Equipment; Construction or Alteration of Facilities
  Sec. 606. Employment of Individuals with Disabilities
  Sec. 607. Requirements for Prescribing Regulations

- Part B: *Assistance for Education of All Children With Disabilities.*

  Sec. 611. Authorization; Allotment; Use of Funds; Authorization of Appropriations *(most subsections)*
  Sec. 616. Witholding and Judicial Review
  Sec. 617. Administration *(most subsections)*
  Sec. 618. Program Information
  Sec. 619. Preschool Grants *(most subsections)*

- Part C: *Infants and Toddlers with Disabilities* - more information will be forthcoming on changes to Virginia's *Part H* (new Part C) policies and procedures. Sections 631-645

- Part D: *National Activities to Improve Education of Children with Disabilities*. Sections 651-687

The IDEA Amendments can be accessed on the Virginia Department of Education Web Page at **http://pen.k12.va.us/Anthology/VDOE/** or by contacting Virginia Department of Education staff.

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
VIRGINIA'S SPECIAL EDUCATION REGULATIONS **PART I -- DEFINITIONS** The following words and terms, when used in these regulations, shall have the following meaning, unless the context clearly indicates otherwise:	**SEC. 602. DEFINITIONS.** Except as otherwise provided, as used in this Act:	6/4/97
"Age of eligibility" means all eligible children with disabilities who have not graduated from a secondary school or completed a program approved by the Board of Education and who are identified as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, a visual impairment which may include blindness, or who have other disabilities as defined by the Board of Education; who, because of such impairments, are in need of special education, whose second birthday falls on or before September 30, and who have not reached their twenty-second birthday on or before September 30.	*no corresponding definition in the amendments*	
"Assistive technology device" means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve the functional capabilities of children with disabilities	**SEC. 602. (1) ASSISTIVE TECHNOLOGY DEVICE** - The term 'assistive technology device' means any item, piece of equipment, or product system, whether acquired commercially off the shelf, modified, or customized, that is used to increase, maintain, or improve functional capabilities of a child with a disability.	6/4/97
"Assistive technology service" means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. The term includes: 1. The evaluation of the needs of a child with a disability, including a functional evaluation of the child in the child's customary environment; 2. Purchasing, leasing or otherwise providing for the acquisition of assistive technology devices by children with disabilities; 3. Selecting, designing, fitting, customizing, adapting, applying, retaining, repairing, or replacing assistive technology devices;	**SEC. 602. (2) ASSISTIVE TECHNOLOGY SERVICE** - The term 'assistive technology service' means any service that directly assists a child with a disability in the selection, acquisition, or use of an assistive technology device. Such term includes-- (A) the evaluation of the needs of such child, including a functional evaluation of the child in the child's customary environment; (B) purchasing, leasing, or otherwise providing for the acquisition of assistive technology devices by such child; (C) selecting, designing, fitting, customizing, adapting,	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Assistive technology service" (continued) 4. Coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation programs; 5. Training or technical assistance for a child with a disability or, if appropriate, that child's family; 6. Training or technical assistance for professionals (including individuals providing education or rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life function of children with disabilities.	applying, maintaining, repairing, or replacing of assistive technology devices; (D) coordinating and using other therapies, interventions, or services with assistive technology devices, such as those associated with existing education and rehabilitation plans and programs; (E) training or technical assistance for such child, or, where appropriate, the family of such child; and (F) training or technical assistance for professionals (including individuals providing education and rehabilitation services), employers, or other individuals who provide services to, employ, or are otherwise substantially involved in the major life functions of such child.	6/4/97
"Audiology" means services provided by a qualified audiologist and includes: 1. Identification of children with hearing loss; 2. Determination of the range, nature, and degree of hearing loss, including referral for medical or other professional attention for the rehabilitation of hearing; 3. Provision of habilitative activities, such as language habilitation, auditory training, speech reading (lip-reading), hearing evaluation, and speech conservation; 4. Creation and administration of programs for prevention of hearing loss; 5. Counseling and guidance of pupils, parents and teachers regarding hearing loss; 6. Determination of the child's need for group and individual amplification, selecting and fitting an appropriate aid and evaluating the effectiveness of amplification.	*no corresponding definition in the amendments*	
"Autism" means a developmental disability significantly affecting verbal and nonverbal communication and social interaction, generally evident before age 3, that adversely affects a child's educational performance. Other characteristics often associated with autism are engagement in repetitive activities and stereotyped movements, resistance to environmental change or change in daily routines, and unusual responses to sensory experiences.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Change in identification" means a change in the Eligibility Committee's determination of the child's disability.	*no corresponding definition in the amendments*	
"Change in placement" means: 1. The change in a child's academic offerings from general to special education and from special education to general education; 2. The expulsion or long-term suspension of a student with a disability; 3. The placement change which results from a change in the identification of a disability; 4. The change from a public school to a private day, residential or state operated program; from a private day, residential or state operated program to a public school; or to a placement in a separate facility for educational purposes; 5. Graduation.	*no corresponding definition in the amendments*	
"Change in placement procedures" means: 1. Written notice to the parent; 2. IEP committee meeting; 3. Parent consent to change the placement.	*no corresponding definition in the amendments*	
"Child" means any person who shall not have reached his twenty-second birthday by September 30 of the current year.	*no corresponding definition in the amendments*	
"Children with disabilities" means those children evaluated, in accordance with these regulations, as having autism, deaf-blindness, a developmental delay, a hearing impairment which may include deafness, mental retardation, multiple disabilities, an orthopedic impairment, other health impairment, a serious emotional disturbance, a severe and profound disability, a specific learning disability, a speech or language impairment, a traumatic brain injury, or a visual impairment which may include blindness, who, because of these impairments, need special education and related services.	**SEC. 602. (3) CHILD WITH A DISABILITY -** **(A) IN GENERAL-** The term `child with a disability' means a child-- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Comprehensive programs and services" means educational programs and support services which are required to provide a free appropriate educational program in the least restrictive environment to every child with a disability ages 2 to 21, inclusive, in each local school division or other public agencies responsible for providing educational services to children with disabilities.	*no corresponding definition in the amendments*	
"Consent" means: 1. The parent has been fully informed of all information relevant to the activity for which consent is sought in his native language, or other mode of communication; 2. The parent understands and agrees, in writing, to the carrying out of the activity for which consent is sought and the consent describes that activity and lists the records (if any) which will be released and to whom; and, 3. The parent understands that the granting of consent is voluntary on the part of the parent and may be revoked any time prior to the time limits set forth in Section 3.4.	*no corresponding definition in the amendments*	
"Counseling services" means services provided by qualified visiting teachers, social workers, psychologists, guidance counselors, or other qualified personnel.	*no corresponding definition in the amendments*	
"Current evaluation" means one that has been completed within 365 calendar days or less.	*no corresponding definition in the amendments*	
"Days" are specified as either "calendar days" or "administrative working days". "Administrative working days" means days exclusive of Saturdays, Sundays, and officially designated holidays for all local school division personnel. "Calendar days" means consecutive days, inclusive of Saturdays, Sundays, and officially designated holidays at the local school division level. Whenever any period of time fixed by this procedure shall expire on a Saturday, Sunday, or school holiday, the period of time for taking such action under this procedure shall be extended to the next day, not a Saturday, Sunday, or school holiday.	*no corresponding definition in the amendments*	
"Deafness" means a hearing impairment that is so severe that the child is impaired in processing linguistic information through hearing, with or without amplification, that adversely affects educational performance.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Deaf blindness" means concomitant hearing and visual impairments, the combination of which causes such severe communication and other developmental and educational problems that they cannot be accommodated in special education programs solely for deaf or blind children	*no corresponding definition in the amendments*	
"Developmental delay" means a significant delay in one or more of the following areas of development for a child below age 8: 1. Cognitive ability 2. Motor skills 3. Social/adaptive behavior 4. Perceptual skills 5. Communication skills	**SEC. 602. (3) (B)CHILD AGED 3 THROUGH 9** - The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child-- (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services.	6/4/97
not addressed in current state regulations	**SEC. 602. (4) EDUCATIONAL SERVICE AGENCY** - The term 'educational service agency' -- (A) means a regional public multiservice agency-- (i) authorized by State law to develop, manage, and provide services or programs to local educational agencies; and (ii) recognized as an administrative agency for purposes of the provision of special education and related services provided within public elementary and secondary schools of the State; and (B) includes any other public institution or agency having administrative control and direction over a public elementary or secondary school.	6/4/97
not addressed in current state regulations	**SEC. 602. (5) ELEMENTARY SCHOOL** - The term 'elementary school' means a nonprofit institutional day or residential school that provides elementary education, as determined under State law.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 602. (6) EQUIPMENT** - The term 'equipment' includes-- (A) machinery, utilities, and built-in equipment and any necessary enclosures or structures to house such machinery, utilities, or equipment; and (B) all other items necessary for the functioning of a particular facility as a facility for the provision of educational services, including items such as instructional equipment and necessary furniture; printed, published, and audio-visual instructional materials; telecommunications, sensory, and other technological aids and devices; and books, periodicals, documents, and other related materials.	6/4/97
not addressed in current state regulations	**SEC. 602. (7) EXCESS COSTS** - The term 'excess costs' means those costs that are in excess of the average annual per-student expenditure in a local educational agency during the preceding school year for an elementary or secondary school student, as may be appropriate, and which shall be computed after deducting-- (A) amounts received-- (i) under part B of this title; (ii) under part A of title I of the Elementary and Secondary Education Act of 1965; or (iii) under part A of title VII of that Act; and (B) any State or local funds expended for programs that would qualify for assistance under any of those parts	6/4/97
"Direct services" means services provided to a child with a disability by the state directly, by contract, or through other arrangements.	*no corresponding definition in the amendments*	
"Early identification" means the implementation of a formal plan for identifying a disability as early as possible in a child's life.	*no corresponding definition in the amendments*	
"Emotional disturbance": see "Serious emotional disturbance".	*no corresponding definition in the amendments*	
"Evaluation" means procedures used to determine whether a child has a disability and the nature and extent of the special education and related services that the child needs. The term means procedures used selectively with an individual child and does not include basic tests administered or procedures used with all children in a school, grade, or class.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Federal financial assistance" means any grant, loan, contract or any other arrangement by which the U.S. Department of Education provides or otherwise makes available assistance in the form of funds, services of federal personnel, or real and personal property.	*no corresponding definition in the amendments*	
"Free appropriate public education" (FAPE) means special education and related services which: 1. Are provided at public expense, under public supervision and direction, and without charge; 2. Meet the standards of the Board of Education; 3. Include preschool, elementary school, middle school, or secondary school, and/or vocational education; and 4. Are provided in conformity with an individualized education program. FAPE is a statutory term which requires special education and related services to be provided in accordance with an individualized education program (IEP).	**SEC. 602. (8) FREE APPROPRIATE PUBLIC EDUCATION -** The term 'free appropriate public education' means special education and related services that-- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 614(d).	6/4/97
"Hearing impairment" means an impairment in hearing, whether permanent or fluctuating, that adversely affects a child's educational performance but which is not included under the definition of "deafness" in this section.	*no corresponding definition in the amendments*	
"Impartial hearing officer" means a person, selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted: 1. By a person employed by a public agency involved with the care or education of the child; or 2. By a person having a personal or professional interest which would conflict with his or her objectivity in the hearing. A hearing officer is not an employee of the Local Education Agency (LEA) or State Education Agency (SEA) solely because he or she is paid by the agency to serve as a hearing officer.	*no corresponding definition in the amendments*	
"Implementation plan" means the plan developed by the LEA designed to operationalize the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan shall include the name and position of the individual in the local school division charged with the implementation of the decision (case manager) as well as the date for effecting such plan.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Independent educational evaluation" (IEE) means an evaluation conducted by a qualified examiner(s) who is not employed by the public agency responsible for the education of the child in question. Whenever an independent evaluation is made at public expense, the criteria governing the evaluation, including the location of the evaluation and the qualifications of the examiner(s), must be the same as the criteria the public agency uses when it initiates an evaluation.	*no corresponding definition in the amendments*	
not addressed in current state regulations	**SEC. 602. (9) INDIAN** - The term 'Indian' means an individual who is a member of an Indian tribe. **SEC. 602. (10) INDIAN TRIBE** - The term 'Indian tribe' means any Federal or State Indian tribe, band, rancheria, pueblo, colony, or community, including any Alaska Native village or regional village corporation (as defined in or established under the Alaska Native Claims Settlement Act).	6/4/97
"Individualized education program" (IEP) means a written statement for each child with a disability developed in any meeting by a representative of the LEA who shall be qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities, the teacher, the parents of such child, and whenever appropriate, such child. An IEP shall include: 1. A statement of the present levels of educational performance; a. The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and non-academic areas. b. The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included. c. There should be a direct relationship between the present level of performance and the other components of the IEP. 2. A statement of annual goals, including short-term instructional objectives;	**SEC. 602. (11) INDIVIDUALIZED EDUCATION PROGRAM** - The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with section 614(d).	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
3. A statement of the specific education and related services to be provided, and the extent to which such child will be able to participate in regular educational programs; 4. The projected date for initiation and anticipated duration of the services month, day, and year; 5. Appropriate objective criteria and evaluation procedures and schedules for determining, at least on an annual basis, whether instructional objectives are being achieved; 6. Necessary information regarding the Literacy Testing Program (LTP) (see §3.3B5f); 7. A statement of the needed transition services for each student beginning no later than age 16 (and at a younger age, if determined appropriate) including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. The transition services must address each of the following areas: a. The development of employment and other post-school adult living objectives; b. Instruction; c. Community experiences; d. If appropriate, acquisition of daily living skills and functional vocational evaluation; unless the IEP Committee determines that services are not needed in one or more of those areas. The IEP Committee must then include in the IEP a statement to that effect and the basis for that determination in the IEP; 8. A statement as to whether or not the student will participate in Family Life Education.		
not addressed in current state regulations	**SEC. 602. (12) INDIVIDUALIZED FAMILY SERVICE PLAN -** The term `individualized family service plan' has the meaning given such term in section 636.	6/4/97
not addressed in current state regulations	**SEC. 602. (13) INFANT OR TODDLER WITH A DISABILITY -** The term `infant or toddler with a disability' has the meaning given such term in section 632.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 602 (14) INSTITUTION OF HIGHER EDUCATION** - The term `institution of higher education'-- (A) has the meaning given that term in section 1201(a) of the Higher Education Act of 1965; and (B) also includes any community college receiving funding from the Secretary of the Interior under the Tribally Controlled Community College Assistance Act of 1978.	6/4/97
"Initial placement" means the first public agency placement in either a public school, state operated program, or private school program providing special education and/or related services.	*no corresponding definition in the amendments*	
"In-service training" means training other than that received by an individual in a full-time program which leads to a degree.	*no corresponding definition in the amendments*	
"Interpreting personnel" means personnel providing educational interpreting services for children with hearing impairments and/or deafness meeting qualifications set forth under the section on Qualified Professionals.	*no corresponding definition in the amendments*	
"Learning disability": see "Specific learning disability".	*no corresponding definition in the amendments*	
"Least Restrictive Environment" (LRE) means that to the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and that special classes, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Local Educational Agency" (LEA) means the local school division or other public agencies responsible for providing educational services to children with disabilities	**SEC. 602. (15) LOCAL EDUCATIONAL AGENCY -** (A) The term 'local educational agency' means a public board of education or other public authority legally constituted within a State for either administrative control or direction of, or to perform a service function for, public elementary or secondary schools in a city, county, township, school district, or other political subdivision of a State, or for such combination of school districts or counties as are recognized in a State as an administrative agency for its public elementary or secondary schools. (B) The term includes-- (i) an educational service agency, as defined in paragraph (4); and (ii) any other public institution or agency having administrative control and direction of a public elementary or secondary school. (C) The term includes an elementary or secondary school funded by the Bureau of Indian Affairs, but only to the extent that such inclusion makes the school eligible for programs for which specific eligibility is not provided to the school in another provision of law and the school does not have a student population that is smaller than the student population of the local educational agency receiving assistance under this Act with the smallest student population, except that the school shall not be subject to the jurisdiction of any State educational agency other than the Bureau of Indian Affairs.	6/4/97
"Medical services" means services provided by a licensed physician to determine a child's medically related disability which results in the child's need for special education and related services.	*no corresponding definition in the amendments*	
"Mental retardation" means significantly subaverage general intellectual functioning existing concurrently with deficits in adaptive behavior and manifested during the developmental period, which adversely affects a child's educational performance.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Multiple disabilities" means concomitant impairments (such as mental retardation - blindness, mental retardation - orthopedic impairment, etc.), the combination of which causes such severe educational problems that they cannot be accommodated in special education programs solely for one of the impairments. The term does not include children with deaf - blindness.	*no corresponding definition in the amendments*	
"Native language" as defined by section 703(a)(2) of the Bilingual Education Act, when used with reference to a person of limited English - speaking ability, means the language normally used by that person, or in the case of a child, the language normally used by the parents of the child. 1. In all direct contact with a child (including evaluation of the child), communication would be in the language normally used by the child and not that of the parents, if there is a difference between the two. 2. If a person is deaf or blind, or has no written language, the mode of communication would be that normally used by the person (such as sign language, Braille, or oral communication).	**SEC. 602. (16) NATIVE LANGUAGE** - The term 'native language', when used with reference to an individual of limited English proficiency, means the language normally used by the individual, or in the case of a child, the language normally used by the parents of the child.	6/4/97
"Non-academic services and extracurricular services" may include: counseling services, athletics, transportation, health services, recreational activities, special interest groups or clubs sponsored by the public agency, referrals to agencies that provide assistance to individuals with disabilities, and employment of students, including both employment by the public agency and assistance in making outside employment available.	*no corresponding definition in the amendments*	
not addressed in current state regulations	**SEC. 602. (17) NONPROFIT**- The term 'nonprofit', as applied to a school, agency, organization, or institution, means a school, agency, organization, or institution owned and operated by one or more nonprofit corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.	6/4/97
"Notification" means written statements in English and in the primary language of the parent's home; and oral communication in the primary language of the parent's home.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Occupational therapy" means services provided by a qualified occupational therapist or services provided under the direction or supervision of a qualified occupational therapist and includes: 1. Improving, developing, or restoring functions impaired or lost through illness, injury, or deprivation; 2. Improving ability to perform tasks for independent functioning when functions are impaired or lost; and, 3. Preventing, through early intervention, initial or further impairment or loss of function.	*no corresponding definition in the amendments*	
"Orthopedic impairment" means a severe orthopedic impairment that adversely affects a child's educational performance. The term includes impairments caused by congenital anomaly (e.g., club foot, absence of some member, etc.), impairments caused by disease (e.g., poliomyelitis, bone tuberculosis, etc.), and impairments from other causes (e.g., cerebral palsy, amputations, and fractures or burns that cause contracture).	*no corresponding definition in the amendments*	
"Other health impairment" means having limited strength, vitality or alertness due to health problems such as a heart condition, tuberculosis, rheumatic fever, arthritis, asthma, sickle cell anemia, hemophilia, epilepsy, lead poisoning, leukemia, attention deficit disorder/attention deficit hyperactivity disorder, or diabetes that are chronic or acute and that adversely affect a child's educational performance.	*no corresponding definition in the amendments*	
not addressed in current state regulations	**SEC. 602. (18) OUTLYING AREA** - The term 'outlying area' means the United States Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands.	6/4/97
"Parent" means a parent, a guardian, a person acting as a parent of a child, or a surrogate parent who has been appointed pursuant to §3.5. The term does not include the state if the child is a ward of the state. The term means either parent, unless the LEA has been provided with evidence that there is a legally binding instrument or a state law or court order to the contrary. The term also includes persons acting in the place of a parent such as a grandparent or stepparent with whom the child lives. A child 18 years or older may assert any rights under these regulations in his own name.	**SEC. 602. (19) PARENT**- The term 'parent'-- (A) includes a legal guardian; and (B) except as used in sections 615(b)(2) and 639(a)(5), includes an individual assigned under either of those sections to be a surrogate parent. *{IDEA Amendments address the transfer of parental rights at age of majority in **SEC. 615.(m) Procedural Safeguards**. Refer to pages 74 and 75 of this document.}*	6/4/97
not addressed in current state regulations	**SEC. 602. (20) PARENT ORGANIZATION** - The term 'parent organization' has the meaning given that term in section 682(g).	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Parent counseling and training" means assisting parents in understanding the special needs of their child and providing parents with information about child development.	*no corresponding definition in the amendments*	
not addressed in current state regulations	**SEC. 602. (21) PARENT TRAINING AND INFORMATION CENTER** - The term 'parent training and information center' means a center assisted under section 682 or 683.	6/4/97
"Participating agency" means any agency or institution which collects, maintains, or uses personally identifiable information or from which information is obtained.	*no corresponding definition in the amendments*	
"Physical education" means as follows: 1. The development of: a. Physical and motor fitness; b. Fundamental motor skills and patterns; and, c. Skills in aquatics, dance, and individual and group games and sports (including intramural and lifetime sports). 2. The term includes special physical education, adaptive physical education, movement education, and motor development.	*no corresponding definition in the amendments*	
"Physical therapy" means services provided by a qualified physical therapist or under the direction or supervision of a qualified physical therapist upon medical referral and direction.	*no corresponding definition in the amendments*	
"Program" means the special education and related services as determined by a child's individualized educational program.	*no corresponding definition in the amendments*	
"Psychological services" includes those services provided by a qualified psychologist or services provided under the direction or supervision of a qualified psychologist: 1. Administering psychological and educational tests and other assessment procedures; 2. Interpreting assessment results; 3. Obtaining, integrating, and interpreting information about child behavior and conditions relating to learning;	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
4. Consulting with other staff members in planning school programs to meet the special needs of children as indicated by psychological tests, interviews, and behavioral evaluations; and 5. Planning and managing a program of psychological services, including psychological counseling for children and parents.		
"Public agency" means the state educational agency (SEA), local educational agencies, intermediate educational units, and any other public agencies that are responsible for providing education to children with disabilities.	*no corresponding definition in the amendments*	
"Public expense" means that the LEA either pays for the full cost of the service or evaluation or ensures that the service and/or evaluation is otherwise provided at no cost to the parent.	*no corresponding definition in the amendments*	
"Public notice" means the process by which certain information is made available to the general public. Public notice procedures may include, but not be limited to, newspaper advertisements, radio announcements, television features and announcement, handbills, brochures, and other methods which are likely to succeed in providing information to the public.	*no corresponding definition in the amendments*	
"Qualified" means that a person has met the State Board educational agency approved or recognized certification, licensing, registration or other comparable requirements which apply to the area in which he or she is providing special education or related services. In addition, the professional must meet other state agency requirements for such professional service, and/or Virginia Licensure requirements as designated by State Law.	*no corresponding definition in the amendments*	
"Recipient" means any state or other political subdivision, any public or private agency, institution, organization, or other entity, or any person to which public financial assistance is extended directly or through another recipient.	*no corresponding definition in the amendments*	
"Recreation" includes: 1. Assessment of leisure function; 2. Therapeutic recreation services; 3. Recreation program in schools and community agencies; and 4. Leisure education.	*no corresponding definition in the amendments*	

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VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Reevaluation" means completion of a new evaluation.	*no corresponding definition in the amendments*	
"Rehabilitation counseling services" means services provided by qualified personnel in individual or group sessions that focus specifically on career development, employment preparation, achieving independence, and integration in the workplace and community of a student with a disability. The term also includes vocational rehabilitation services provided to students with disabilities by vocational rehabilitation programs funded under the Rehabilitation Act of 1973, as amended.	*no corresponding definition in the amendments*	
"Related services" means transportation and such developmental, corrective, and other supportive services as are required to assist a child with a disability to benefit from special education, and includes speech - language pathology and audiology; psychological services; physical and occupational therapy; recreation, including therapeutic recreation; early identification and assessment of disabilities in children; counseling services, including rehabilitation counseling; and medical services for diagnostic or evaluation purposes. The term also includes school health services, social work services in schools, and parent counseling and training. Senate Report No. 94-168 provides a definition of "related services," making clear that all such related services may not be required for each individual child and that such term includes early identification and assessment of disabilities and the provision of services to minimize the effects of such conditions. The list of related services is not exhaustive and may include other developmental, corrective, or supportive services (such as artistic and cultural programs, and art, music and dance therapy), if they are required to assist a child with a disability to benefit from special education. Each related service defined under this part may include appropriate administrative and supervisory activities that are necessary for program planning, management, and evaluation.	**SEC. 602. (22) RELATED SERVICES** - The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.	6/4/97
"School health services" means services provided by a qualified school nurse or other qualified person.	*no corresponding definition in the amendments*	
"Screening" means those processes which are used routinely with all children to help determine educational strengths and weaknesses.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 602. (23) SECONDARY SCHOOL** - The term 'secondary school' means a nonprofit institutional day or residential school that provides secondary education, as determined under State law, except that it does not include any education beyond grade 12.	6/4/97
not addressed in current state regulations	**SEC. 602. (24) SECRETARY** - The term 'Secretary' means the Secretary of Education.	6/4/97
"Section 504" means that section of the Rehabilitation Act of 1973 which is designed to eliminate discrimination on the basis of handicap in any program or activity receiving federal financial assistance.	*no corresponding definition in the amendments*	
"Serious emotional disturbance" means as follows: 1. A condition exhibiting one or more of the following characteristics over a long period of time and to a marked degree, that adversely affects a child's educational performance: a. An inability to learn which cannot be explained by intellectual, sensory, or health factors; b. An inability to build or maintain satisfactory interpersonal relationships with peers and teachers; c. Inappropriate types of behavior or feelings under normal circumstances; d. A general pervasive mood of unhappiness or depression; or e. A tendency to develop physical symptoms or fears associated with personal or school problems. 2. The term includes children who are schizophrenic, but does not include children who are socially maladjusted unless it is determined that they are seriously emotionally disturbed.	*no corresponding definition in the amendments*	
"Severe and profound disability" means individuals who: 1. Have primary disabilities that severely impair cognitive abilities, adaptive skills, and life functioning; 2. May have associated severe behavior problems; 3. May have the high probability of additional physical and/or sensory disabilities; and 4. Do require significantly more educational resources than are provided for children with mild and moderate disabilities in special education programs.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
“Social work services in schools” includes those services provided by a qualified visiting teacher or social worker: 1. Preparing a social or developmental history on a child with a disability; 2. Group and individual counseling with the child and family; 3. Working with those problems in a child’s living situation (home, school, and community) that affect the child’s adjustment in school; 4. Mobilizing school and community resources to enable the child to learn as effectively as possible in his or her educational program.	*no corresponding definition in the amendments*	
“Special education” means specially designed instruction, at no cost to the parent, to meet the unique needs of a child with a disability, including instruction conducted in the classroom, in the home, in hospitals, and institutions and in other settings and instruction in physical education. 1. The term includes speech-language pathology or any other related service, if the service consists of specially designed instruction, at no cost to the parents, to meet the unique needs of a child with a disability, and is considered “special education” rather than a “related service” under state standards. 2. The term also includes vocational education if it consists of specially designed instruction at no cost to the parent, to meet the unique needs of a child with a disability. 3. The terms in this definition are defined as follows: a. “At no cost” means that all specially designed instruction is provided without charge, but does not preclude incidental fees which are normally charged to nondisabled students or their parents as a part of the regular education program. b. “Physical education” means (1) The development of: (a) Physical and motor fitness; (b) Fundamental motor skills and patterns; and (c) Skills in aquatics, dance and individual and group games and sports (including intramural and lifetime sports).	**SEC. 602. (25) SPECIAL EDUCATION** - The term `special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including-- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
(2) The term includes special physical education, adaptive physical education, movement education, and motor development. c. "Vocational education" means organized educational programs that are directly related to the preparation of individuals for paid or unpaid employment, or for additional preparation for a career requiring other than a baccalaureate or advanced degree. 4. The definition of Special Education is a particularly important one. While a child may be considered to have a disability under other laws, he does not have a disability under these regulations unless he needs special education. If a child does not need special education, there can be no related services since the provision of a related service must be necessary for a child to benefit from special education		
"Specific learning disability" means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which may manifest itself in an imperfect ability to listen, think, speak, read, write, spell or to do mathematical calculations. The term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. The term does not include children who have learning problems which are primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.	**SEC. 602. (26) SPECIFIC LEARNING DISABILITY -** **(A) IN GENERAL** - The term 'specific learning disability' means a disorder in one or more of the basic psychological processes involved in understanding or in using language, spoken or written, which disorder may manifest itself in imperfect ability to listen, think, speak, read, write, spell, or do mathematical calculations. **(B) DISORDERS INCLUDED**- Such term includes such conditions as perceptual disabilities, brain injury, minimal brain dysfunction, dyslexia, and developmental aphasia. **(C) DISORDERS NOT INCLUDED**- Such term does not include a learning problem that is primarily the result of visual, hearing, or motor disabilities, of mental retardation, of emotional disturbance, or of environmental, cultural, or economic disadvantage.	6/4/97
"Speech or language impairment" means a communication disorder, such as stuttering, impaired articulation, a language impairment, or a voice impairment, which adversely affects a child's educational performance.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Speech/language pathology" includes: 1. Identification of children with speech or language disorders; 2. Diagnosis and appraisal of specific speech or language disorders; 3. Referral for medical or other professional attention necessary for the habilitation of speech or language disorders; 4. Provisions of speech and language services for the habilitation or prevention of communicative disorders; and 5. Counseling and guidance of parents, children, and teachers regarding speech and language disorders.	*no corresponding definition in the amendments*	
not addressed in current state regulations	**SEC. 602. (27) STATE** - The term `State' means each of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and each of the outlying areas.	6/4/97
"State educational agency" (SEA) means the Virginia Department of Education.	**SEC. 602. (28) STATE EDUCATIONAL AGENCY** - The term `State educational agency' means the State board of education or other agency or officer primarily responsible for the State supervision of public elementary and secondary schools, or, if there is no such officer or agency, an officer or agency designated by the Governor or by State law.	6/4/97
not addressed in current state regulations	**SEC. 602. (28) SUPPLEMENTARY AIDS AND SERVICES**- The term `supplementary aids and services' means, aids, services, and other supports that are provided in regular education classes or other education-related settings to enable children with disabilities to be educated with nondisabled children to the maximum extent appropriate in accordance with section 612(a)(5).	6/4/97
"Support services" means implementing the comprehensive system of personnel development; recruitment and training of hearing officers in conjunction with the Supreme Court of Virginia; and recruitment and training of surrogate parents; and public information and parent-training activities relating to a free appropriate public education for children with disabilities.	*no corresponding definition in the amendments*	
"Surrogate parent" means a person appointed in accordance with procedures set forth to provide children who are in legal or physical custody of the state, or whose parents are not known or are unavailable, with the protection of procedural safeguards.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Testing" means individual evaluation procedures (formal testing and assessment) to determine initial or continued eligibility for special education services.	*no corresponding definition in the amendments*	
"Transition services" means a coordinated set of activities for a student, designed within an outcome-oriented process, that promotes movement from school to post-school activities, including postsecondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation. The coordinated set of activities described must: 1. Be based on the individual student's needs, taking into account the student's preferences and interests; and 2. Include: a. The development of employment and other post-school adult living objectives; b. Instruction; c. Community experiences; and d. If appropriate, acquisition of daily living skills and functional vocational evaluation. Transition services for students with disabilities may be special education if they are provided as specially designed instruction, or related services if they are required to assist a student with a disability to benefit from special education. The list of activities above is not intended to be exhaustive.	**SEC. 602. (30) TRANSITION SERVICES** - The term 'transition services' means a coordinated set of activities for a student with a disability that-- (A) is designed within an outcome-oriented process, which promotes movement from school to post-school activities, including post-secondary education, vocational training, integrated employment (including supported employment), continuing and adult education, adult services, independent living, or community participation; (B) is based upon the individual student's needs, taking into account the student's preferences and interests; and (C) includes instruction, related services, community experiences, the development of employment and other post-school adult living objectives, and, when appropriate, acquisition of daily living skills and functional vocational evaluation.	6/4/97
"Transportation" includes: 1. Travel to and from school and between schools; 2. Travel in and around school building; and 3. Specialized equipment (such as special or adapted buses, lifts, and ramps), if required to provide special transportation for a child with a disability.	*no corresponding definition in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
"Traumatic brain injury" means an acquired injury to the brain caused by an external physical force, resulting in total or partial functional disability or psychosocial impairment, or both, that adversely affects a child's educational performance. The term applies to open or closed head injuries resulting in impairments in one or more areas, such as cognition; language; memory; attention; reasoning; abstract thinking; judgment; problem-solving; sensory, perceptual and motor abilities; psychosocial behavior; physical functions; information processing; and speech. The term does not apply to brain injuries that are congenital or degenerative, or brain injuries induced by birth trauma.	*no corresponding definition in the amendments*	
"Visual impairment" means an impairment in vision that, even with correction, adversely affects a child's educational performance. The term includes both partial sight and blindness.	*no corresponding definition in the amendments*	
"Vocational education" means organized educational programs offering a sequence of courses or instruction in a sequence or aggregation of occupational competencies that are directly related to the preparation of individuals for paid or unpaid employment in current or emerging occupations requiring other than a baccalaureate or advanced degree. These programs must include competency-based applied learning that contributes to an individual's academic knowledge, higher-order reasoning, and problem-solving skills, work attitudes, general employability skills, and the occupation-specific skills necessary for economic independence as a productive and contributing member of society. This term also includes applied technology education.	*no corresponding definition in the amendments*	
"Ward of the State" means all parental rights and responsibilities for the care and custody of a child have been terminated by court order or applicable law, and the child has been placed in the care and custody of the State.	*no corresponding definition in the amendments*	
PART II **Responsibilities of the State Department of Education** *{Please refer to the Virginia SPED Regulations}*	**SEC. 612. STATE ELIGIBILITY.** *{This section does not correspond directly to Part II of the Virginia SPED Regulations (1994). Parts of SEC. 612 have been included where applicable. Parts not included in this side-by-side comparison may ultimately affect LEAs. SEC. 612 in its entirety can be found in Appendix B.}*	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
PART III **Responsibilities of LEAS and State Agencies** **§3.1 Applicability of Requirements** The requirements set forth in this part are applicable to local school divisions and state agencies providing education and related services for children with disabilities and are developed in accordance with state and federal laws and regulations.	**SEC. 613. Local Educational Agency Eligility** *{This section does not correspond directly to Part III of the Virginia Special Education Regulations (1994). Parts of SEC. 612 have been included where applicable. Parts not included in this side-by-side comparison may ultimately affect LEAs. SEC. 613 in its entirety can be found in Appendix C.}* *no corresponding section in the amendments*	6/4/97
§3.2 Identification, Evaluation, and Eligibility A. Target Ages and Eligibility Each Annual Special Education Plan/Report and Funding Application shall include procedures which ensure that all children residing within the jurisdiction of an LEA, birth to age 21, inclusive, who may have disabilities, and who may need special education and related services are identified, located, and evaluated. The plan also shall include a practical method for determining children who are receiving needed special education and related services and those who are not receiving such services.	*no corresponding section in the amendments*	
B. Child Find 1. Each local school division shall, at least annually, conduct a public awareness campaign to: a. Inform the community of a person's statutory right to a free appropriate education and the availability of special education programs and services; b. Generate referrals; and c. Explain the nature of disabilities, the early warning signs of disabilities, and the need for early intervention.	**SEC. 612.(a)(3) CHILD FIND -** **(A)** **IN GENERAL-** All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services. **(B)** **CONSTRUCTION-** Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.	6/497

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
2. Procedures for informing the community shall show evidence of the use of a variety of materials and media, and shall: a. Provide for personal contacts with community groups, public and private agencies and organizations; and b. Provide information in the person's native language or primary mode of communication. 3. There shall be evidence of involvement of parents and community members in the required child find and community awareness campaign. 4. Each local school division shall maintain an active and continuing child find program designed to identify, locate and evaluate those children from birth to 21, inclusive, who are in need of special education and related services. Written procedures shall be established for collecting, reviewing and maintaining such data. 5. All children ages two to 21, inclusive, not enrolled in school and who are suspected of having a disability shall be referred to the division superintendent, or designee, who shall initiate the process of determining eligibility for special education services. 6. Where such children are determined to be eligible for special education services, school divisions are required to offer appropriate programs and placements consistent with each child's IEP from ages two to 21 inclusive.		
C. Screening 1. Each local school division shall establish and maintain screening procedures to assure the identification of children with disabilities residing within its jurisdiction and requiring special education. All procedural safeguards shall be maintained during the screening process. These include the following: a. Written notice when appropriate; b. Confidentiality; and c. Maintenance of student's scholastic record.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
2. The screening process for all children enrolled in the school division is as follows: a. All children, within 60 administrative working days of initial enrollment in a public school, shall be screened in the following areas to determine if formal assessment is indicated: (1) Speech, voice, and language; and (2) Vision and hearing. b. All children (through grade three), within 60 administrative working days of initial enrollment in public schools, shall be screened for fine and gross motor functions to determine if formal assessment is indicated. c. Specific measures or instruments will be employed which use: (1) Both observational and performance techniques; and (2) Techniques which guarantee non - discrimination. 3. There shall be established a formal child study committee in each school to review records and other performance evidence of those children referred through a screening process or referred by a source other than through screening; for example, when a parent or external service provider makes a referral. All referrals for Child Study shall be made to the principal or designee. The committee shall include: a. Referring source, as appropriate (except when referring source would breach confidentiality of child). b. Principal, or designee; c. Teachers; and d. Specialists. The committee must have at least three persons in attendance. 4. The child study committee shall meet within 10 administrative working days following referral.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
5. Actions by the committee shall be documented in writing and shall include information upon which a decision was based. The formal assessment components shall not be initiated (collected) before referral to the special education administrator and parental consent has been obtained.	*no corresponding section in the amendments*	
D. Referral for Evaluation Children suspected of having a disability shall be referred by the child study committee or other referring source to the special education administrator for formal assessment. If referral to the special education administrator is from the child study committee, it shall be made within five administrative working days following the determination by the child study committee that the child is suspected of having a disability. The special education administrator, or designee, shall: 1. Record the date, reason for referral and name(s) of the person/agency making the referral; 2. Implement procedures for maintaining the confidentiality of all data and institute procedural safeguards to: a. Inform the parent of the referral in the native language or primary mode of communication, unless it is clearly not feasible to do so; b. Advise the parent of his rights in the native language or primary mode of communication; and c. Secure written permission of the parent for the formal assessment; 3. Initiate formal assessment procedures; and 4. Notify the referral source, when appropriate, of the results of the decision regarding determination of eligibility.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
E. Evaluation 1. The LEA shall establish procedures for the evaluation of referred children which include the following: a. Written prior notification (in native language); b. Opportunity for independent evaluation; c. Written parental consent; d. Assignment of surrogate parent when necessary; e. Opportunity for an impartial hearing; f. Confidentiality; g. Opportunity for examination of records; and h. Nondiscriminatory testing.	**SEC. 614. (a) (1) INITIAL EVALUATIONS -** (A) **IN GENERAL** - A State educational agency, other State agency, or local educational agency shall conduct a full and individual initial evaluation, in accordance with this paragraph and subsection (b), before the initial provision of special education and related services to a child with a disability under this part. (B) **PROCEDURES** - Such initial evaluation shall consist of procedures-- (i) to determine whether a child is a child with a disability (as defined in section 602(3)); and (ii) to determine the educational needs of such child. (C) **PARENTAL CONSENT** - (i) **IN GENERAL** - The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. (ii) **REFUSAL** - If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
2. The LEA shall establish policies and procedures to ensure the following: a. Tests and other evaluation materials: (1) Are neither culturally nor racially discriminatory; (2) Are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; (3) Have been validated for the specific purpose for which they are used; and (4) Are administered by trained personnel in conformance with the instructions provided by their producer. b. Tests and other evaluation materials include those tailored to assess specific areas of educational need and not merely those which are designed to provide a single general intelligence quotient; c. Tests are selected and administered so as to best ensure that when a test is administered to a child with impaired sensory, manual, or speaking skills, the test results accurately reflect the child's aptitude or achievement level or whatever other factors the test purports to measure rather than reflecting the child's impaired sensory, manual, or speaking skills (except where those skills are the factors which the test purports to measure); d. No single procedure shall be used as the sole criterion for determining an appropriate educational program for a child; e. The evaluation shall be made by a multidisciplinary team or group of persons, including at least one teacher or other specialist with knowledge in the area of suspected disability;	**SEC. 614. (b) EVALUATION PROCEDURES -** **(1) NOTICE**- The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct. **(2) CONDUCT OF EVALUATION** - In conducting the evaluation, the local educational agency shall-- (A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities; (B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and (C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. **(3) ADDITIONAL REQUIREMENTS** - Each local educational agency shall ensure that-- (A) tests and other evaluation materials used to assess a child under this section-- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
3. For a child suspected of having a specific learning disability, the multidisciplinary team: a. Shall include the child's regular teacher or if the child does not have a regular teacher, a classroom teacher qualified to teach a child of that age, or if a child is below school age, a person qualified to teach that age; and b. Shall include at least one person qualified to conduct individual diagnostic examinations of children, such as a specific learning disabilities teacher, school psychologist, speech-language pathologist, or remedial reading teacher. 4. For a child suspected of having a learning disability, the evaluation must include an observation of academic performance in the regular classroom by at least one team member other than the child's regular teacher. In the case of a child of less than school age or out of school, a team member shall observe the child in an environment appropriate for a child that age. 5. The LEA shall establish procedures to ensure a. That each child is assessed by a qualified professional in all areas related to the suspected disability, including, where appropriate, health, vision, hearing, social and emotional status, general intelligence, academic performance, communicative status, and motor abilities. This may include educational, medical, sociocultural, psychological, or developmental assessments. Reports from assessments must be provided in writing. However, the hearing of each child with a disability shall be tested during the eligibility process prior to placement in a special education program. A complete audiological assessment, including tests which will assess inner and middle ear functioning, must be performed on each child who fails two hearing screening tests.	(B) any standardized tests that are given to the child-- (i) have been validated for the specific purpose for which they are used; (ii) are administered by trained and knowledgeable personnel; and (iii) are administered in accordance with any instructions provided by the producer of such tests; (C) the child is assessed in all areas of suspected disability; and (D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
The second hearing screening test shall be completed not less than 15 nor more than 45 calendar days after administration of the first screening test. b. That parents are provided an opportunity to participate, if they so request, in the consideration of the areas to be assessed. Parents must be provided written notification of this right. 6. The LEA shall establish procedures to ensure that eligibility for special education and related services is determined within 65 administrative working days after request for evaluation is received by the special education administrator. 7. A multidisciplinary team may determine that a child has a specific learning disability if: a. the child does not achieve commensurate with his or her age and ability levels in one or more of the areas listed in paragraph b of this section when provided with learning experiences appropriate for the child's age and ability levels; and b. the team finds that a child has a severe discrepancy between achievement and intellectual ability in one or more of the following areas: (1) oral expression; (2) listening comprehension; (3) written expression; (4) basic reading skill; (5) reading comprehension; (6) mathematical calculations; or (7) mathematical reasoning. c. The multidisciplinary team may not identify a child as having a specific learning disability if the severe discrepancy between ability and achievement is primarily the result of (1) a visual, hearing or motor disability; (2) mental retardation; (3) serious emotional disturbance; or (4) environmental, cultural, or economic disadvantage.		

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
F Eligibility Eligibility of children for special education programs and related services shall be determined by an eligibility committee. 1 Membership of the eligibility committee shall include, but not be limited to, school division personnel representing the disciplines providing assessments and the special education administrator, or designee. At least one school division representative serving on the eligibility committee must have either assessed or observed the child. 2. The eligibility committee shall review the assessments, any pertinent information reported by an agency assigned legal custody of the child, and any other special reports to determine if the child has a disability which requires special education and related services. Once eligibility has been determined, adding a related service to an existing IEP is an IEP committee function. The assessments or other relevant data that are required or necessary for the proposed related service is forwarded to the IEP committee in order that appropriate goals and objectives can be developed. 3 The eligibility committee shall follow due process procedures in the determination of eligibility and in ensuring the confidentiality of records. 4 The eligibility committee shall have a written summary that consists of essential deliberations supporting its findings as to the eligibility of each child for a special education program and related services. This summary shall be signed by each eligibility committee member present. a. The written summary shall be maintained in the child's confidential file(s);	**SEC. 614. (b) (4) DETERMINATION OF ELIGIBILITY** - Upon completion of administration of tests and other evaluation materials-- (A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and (B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent. (5) **SPECIAL RULE FOR ELIGIBILITY DETERMINATION** - In making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency. **SEC. 614. (c) ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS** - (1) **REVIEW OF EXISTING EVALUATION DATA** - As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team **[*in Virginia for initial evaluations this means "Eligibility Committee"*]** described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall-- (A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
b. The summary statement of the eligibility committee's essential deliberations shall be forwarded by the committee to the IEP committee upon determination of eligibility. The summary statement may include other recommendations. A statement by each eligibility committee member that the summary statement reflects his conclusions shall be included. If the report does not reflect a particular member's conclusion, then a separate statement shall be submitted by the team member presenting his conclusions. c. The written summary concerning students identified as having a specific learning disability shall also include: (1) A statement indicating whether or not the child has a specific learning disability; (2) The basis for making the determination; (3) Relevant behavior noted during the observation and the relationship of the behavior to the child's academic functioning; (4) Educationally relevant medical findings, if any; (5) Information indicating whether or not there is a severe discrepancy between the child's achievement and ability which cannot be corrected without special education and related services; (6) Effects of any environmental, cultural, or economic disadvantage, as determined by the team; and	(B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-- (i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability; (ii) the present levels of performance and educational needs of the child; (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum. (2) **SOURCE OF DATA** - The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B). (3) **PARENTAL CONSENT** - Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.	6/4/97

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(7) A statement by each eligibility committee member that the report reflects his conclusions. If it does not reflect a particular member's conclusion, then the team member must submit a separate statement presenting his conclusions.	(4) **REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED** - If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency-- (A) shall notify the child's parents of-- (i) that determination and the reasons for it; and (ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and (B) shall not be required to conduct such an assessment unless requested to by the child's parents.	6/4/97
G. Termination of Service(s) 1. Termination of one or more related services for a child is a function of the IEP committee. Termination of related services occurs when the IEP committee determines that the service(s) are no longer required in order for the child to benefit from special-education. 2. Termination of all special education services for a child (i.e., removal from special education) shall be the responsibility of the eligibility committee. The IEP committee shall refer a student to the eligibility committee when they believe the child is no longer eligible to receive special education. Termination of special education services occurs: a. If the eligibility committee determines that the services are no longer required based on the fact that the child no longer meets the eligibility criteria for special education and related services and parental consent has been obtained; or	**SEC. 614. (c) (5) EVALUATIONS BEFORE CHANGE IN ELIGIBILITY** - A local educational agency shall evaluate a child with a disability in accordance with this section before determining that the child is no longer a child with a disability.	6/4/97

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b If the parent withdraws permission for the child to remain in special education, then the decision of the parent to withdraw the child from special education must be reviewed by the LEA pursuant to the change in placement procedures. If the LEA disagrees with the withdrawal decision and attempts to resolve parental withdrawal of consent through informal methods are unsuccessful, the LEA must use other measures as necessary to ensure that parental withdrawal of consent will not result in the withdrawal of a necessary free appropriate public education.		
H Child's Status Pending Determination of Eligibility The child shall remain in the current placement during determination of eligibility for special education and related services.	*no corresponding section in the amendments*	
I Child's Status - Previous Enrollment in Special Education If a child enrolled in a special education program transfers from one LEA to another LEA or from out of state to an LEA, the child shall be placed with written consent of the parent in a special education program consistent with the current IEP. The IEP committee may decide to continue with the placement. If the IEP committee believes the transfer will necessitate a change in educational placement, then the eligibility committee shall review the existing evaluations and conduct new evaluations or update them as appropriate. Pending the eligibility committee's and IEP committee's determination, the child shall be placed with consent of the parent in a special education program consistent with the current IEP. In the case of a child placed in a private residential school, absent parental consent or absent an appropriate program within the LEA, the child will remain in the private residential school until the eligibility committee and IEP committee have made a decision.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
VIRGINIA'S SPECIAL EDUCATION REGULATIONS §3.3 SERVICE DELIVERY		
A. Free Appropriate Public Education 1. Age of Eligibility A free appropriate public education shall be available to all children with disabilities, ages two to 21, inclusive, residing within the jurisdiction of each LEA. Each LEA shall have established the goal of providing a full educational opportunity for all children with disabilities from birth to 21, inclusive, residing within their jurisdiction.	**SEC. 602. (8) FREE APPROPRIATE PUBLIC EDUCATION** - The term 'free appropriate public education' means special education and related services that-- (A) have been provided at public expense, under public supervision and direction, and without charge; (B) meet the standards of the State educational agency; (C) include an appropriate preschool, elementary, or secondary school education in the State involved; and (D) are provided in conformity with the individualized education program required under section 614(d). **SEC. 602. (3) CHILD WITH A DISABILITY** - **(A) IN GENERAL**- The term 'child with a disability' means a child-- (i) with mental retardation, hearing impairments (including deafness), speech or language impairments, visual impairments (including blindness), serious emotional disturbance (hereinafter referred to as 'emotional disturbance'), orthopedic impairments, autism, traumatic brain injury, other health impairments, or specific learning disabilities; and (ii) who, by reason thereof, needs special education and related services. **SEC. 602. (3)(B) CHILD AGED 3 THROUGH 9** - The term 'child with a disability' for a child aged 3 through 9 may, at the discretion of the State and the local educational agency, include a child-- (i) experiencing developmental delays, as defined by the State and as measured by appropriate diagnostic instruments and procedures, in one or more of the following areas: physical development, cognitive development, communication development, social or emotional development, or adaptive development; and (ii) who, by reason thereof, needs special education and related services.	6/4/97

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	SEC. 612. (a) IN GENERAL - A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions: **(1) FREE APPROPRIATE PUBLIC EDUCATION -** (A) **IN GENERAL** - A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school. (B) **LIMITATION**- The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children: (i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and (ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility: (I) were not actually identified as being a child with a disability under section 602(3) of this Act; or (II) did not have an individualized education program under this part. **SEC. 613. (a) IN GENERAL** - A local educational agency is eligible for assistance under this part for a fiscal year if such agency demonstrates to the satisfaction of the State educational agency that it meets each of the following conditions: **(1) CONSISTENCY WITH STATE POLICIES**- The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
2. Continuum of Alternative Placements a. Each local school division shall ensure that a continuum of alternative placements is available to meet the needs of children with disabilities. (1) The continuum must include the alternative placements listed in the definition of special education (i.e., instruction in regular classes, special classes, special schools, home instruction, and instruction in hospitals and institutions). The continuum must make provision for supplementary services (such as resource room or itinerant instruction) to be provided in conjunction with regular class placement. The continuum should include integrated service delivery, that is, where some or all goals and objectives of the student's Individualized Educational Program are met in the general education setting with age-appropriate peers. (2) No single model for the delivery of services to any specific population or category of children with disabilities will be acceptable for meeting the requirement for a continuum of alternative placements (e.g., resource classes as the only option for children who need a self-contained placement or a separate facility as the only alternative placement for students with disabilities). All placement decisions must be based on the individual needs of each child. (3) LEAs shall document fully all alternatives considered and the rationale for choosing the selected placement. (4) Children with disabilities must be served in a program with age-appropriate peers (e.g., secondary age children shall be placed in a secondary school and elementary age children shall be placed in an elementary school), unless it can be shown that for a particular child with a disability the alternative placement is appropriate as documented by the IEP.	*{No corresponding language, refer to:}* **SEC. 602. (25) SPECIAL EDUCATION** - The term `special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including-- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education. **SEC. 614. (f) EDUCATIONAL PLACEMENTS** - Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.	6/4/97

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b If a local school division is unable to provide a free appropriate public education to a child with a disability and it is not appropriately available in a State facility, other than Woodrow Wilson Rehabilitation Center, the local school division shall offer to place the child in Woodrow Wilson Rehabilitation Center or a nonsectarian private school for children with disabilities approved by the Board of Education or such other licensing agency as may be designated by state law. The school board of such division shall pay to, or on behalf of, the parent or guardian of such child the reasonable tuition cost and other reasonable charges as may be determined under the rules of the Interdepartmental Council on Rate-Setting as adopted by the Boards of Education, Social Services and Corrections. The school board, from its own funds, is authorized to pay such additional tuition or charges as it may deem appropriate.		
3 Least Restrictive Environment (LRE) a Each LEA shall establish and implement procedures which satisfy requirements as follows: (1) To the maximum extent appropriate, children with disabilities, including those in public or private institutions or other care facilities, are educated with children who are not disabled; and (2) Special class placement, separate schooling or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. b In providing or arranging for the provision of nonacademic and extracurricular services and activities, including meals, recess periods, and other services and activities provided for nondisabled children, each LEA shall ensure that each child with a disability participates with nondisabled children in those services and activities, to the maximum extent appropriate to the needs of the child with a disability.	**SEC. 612. (a)(5) LEAST RESTRICTIVE ENVIRONMENT -** **(A) IN GENERAL** - To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily. **SEC. 613. (e)(4)(B) ADDITIONAL REQUIREMENT -** Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).	6/4/97

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c. For children in public or private institutions, the LEA shall, where necessary, make arrangements with public and private institutions to ensure that requirements for least restrictive environment are met. (See Placements, §3.3 B.8.)		
4. Safeguards in Evaluation, Eligibility and Placement a. In interpreting evaluation data and in making eligibility and placement decisions, each LEA shall: (1) Draw upon information from a variety of sources, including aptitude and achievement tests, teacher recommendations, physical condition, social or cultural background, and adaptive behavior; (2) Ensure that information obtained from all of these sources is documented and carefully considered; (3) Ensure that the placement decision is made by a group of persons, including persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; and (4) Ensure that the placement decision is made in conformity with the least restrictive environment. (See Least Restrictive Environment, §3.3 A.3.) b. If it is determined that a child has a disability and needs special education and related services, an IEP must be developed for the child in accordance with the regulations.	**SEC. 612.(a)(6) PROCEDURAL SAFEGUARDS -** **(A)** **IN GENERAL**- Children with disabilities and their parents are afforded the procedural safeguards required by section 615. **(B)** **ADDITIONAL PROCEDURAL SAFEGUARDS**- Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child. **SEC. 612.(a)(8) CONFIDENTIALITY**- Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
5. Transportation a Each child with a disability placed in an education program by the local school division shall be entitled to transportation to and from such program at no cost if such transportation is necessary to enable such child to benefit from educational programs and opportunities. b If an LEA enters an agreement with another LEA for the provision of special education and/or related services for a child with a disability, such child shall be transported to and from such program at no cost to the parent. c If a child with a disability is placed in a state residential school for the deaf and the blind, the responsibility for transportation resides with the respective state school. However, when such children in a state residential school are educated as day students, the responsibility for transportation remains with the placing local school division.	**SEC. 602. (22) RELATED SERVICES** - The term 'related services' means transportation, and such developmental, corrective, and other supportive services (including speech-language pathology and audiology services, psychological services, physical and occupational therapy, recreation, including therapeutic recreation, social work services, counseling services, including rehabilitation counseling, orientation and mobility services, and medical services, except that such medical services shall be for diagnostic and evaluation purposes only) as may be required to assist a child with a disability to benefit from special education, and includes the early identification and assessment of disabling conditions in children.	6/4/97
	SEC. 632.(4) EARLY INTERVENTION SERVICES - **(E) (xiv)** transportation and related costs that are necessary to enable an infant or toddler and the infant's or toddler's family to receive another service described in this paragraph;	7/1/98
6. Reevaluation a A reevaluation in all areas related to the suspected disability must be conducted (1) every three years; (2) if conditions warrant a reevaluation at an earlier date; or (3) if the child's parent or teacher requests a reevaluation. b A reevaluation need not consist of all of the same assessments conducted during the initial evaluation as long as the reevaluation includes assessment in all areas related to the suspected disability. If three years have not elapsed and the parent or teacher requests that only specified areas be addressed by additional evaluation, and conditions do not warrant a reevaluation or an assessment which is more comprehensive than that requested by the parent or teacher, the LEA may limit the assessment to those areas in which the parent or teacher requested. c Notice is required for all reevaluations.	**SEC. 614.(a)(2) REEVALUATIONS** - A local educational agency shall ensure that a reevaluation of each child with a disability is conducted-- (A) if conditions warrant a reevaluation or if the child's parent or teacher requests a reevaluation, but at least once every 3 years; and (B) in accordance with subsections (b) and (c). **(b) EVALUATION PROCEDURES** - (1) **NOTICE** - The local educational agency shall provide notice to the parents of a child with a disability, in accordance with subsections (b)(3), (b)(4), and (c) of section 615, that describes any evaluation procedures such agency proposes to conduct.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
6 Reevaluation (continued)	**(2) CONDUCT OF EVALUATION** - In conducting the evaluation, the local educational agency shall- (A) use a variety of assessment tools and strategies to gather relevant functional and developmental information, including information provided by the parent, that may assist in determining whether the child is a child with a disability and the content of the child's individualized education program, including information related to enabling the child to be involved in and progress in the general curriculum or, for preschool children, to participate in appropriate activities; (B) not use any single procedure as the sole criterion for determining whether a child is a child with a disability or determining an appropriate educational program for the child; and (C) use technically sound instruments that may assess the relative contribution of cognitive and behavioral factors, in addition to physical or developmental factors. **(3) ADDITIONAL REQUIREMENTS** - Each local educational agency shall ensure that-- (A) tests and other evaluation materials used to assess a child under this section-- (i) are selected and administered so as not to be discriminatory on a racial or cultural basis; and (ii) are provided and administered in the child's native language or other mode of communication, unless it is clearly not feasible to do so; and (B) any standardized tests that are given to the child-- (i) have been validated for the specific purpose for which they are used; (ii) are administered by trained and knowledgeable personnel; and	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
6 Reevaluation (continued)	(iii) are administered in accordance with any instructions provided by the producer of such tests; (C) the child is assessed in all areas of suspected disability; and (D) assessment tools and strategies that provide relevant information that directly assists persons in determining the educational needs of the child are provided. (4) **DETERMINATION OF ELIGIBILITY** - Upon completion of administration of tests and other evaluation materials-- (A) the determination of whether the child is a child with a disability as defined in section 602(3) shall be made by a team of qualified professionals and the parent of the child in accordance with paragraph (5); and (B) a copy of the evaluation report and the documentation of determination of eligibility will be given to the parent. (5) **SPECIAL RULE FOR ELIGIBILITY DETERMINATION** - in making a determination of eligibility under paragraph (4)(A), a child shall not be determined to be a child with a disability if the determinant factor for such determination is lack of instruction in reading or math or limited English proficiency. (c) **ADDITIONAL REQUIREMENTS FOR EVALUATION AND REEVALUATIONS -** (1) **REVIEW OF EXISTING EVALUATION DATA** - As part of an initial evaluation (if appropriate) and as part of any reevaluation under this section, the IEP Team [***in Virginia for initial evaluation this means "Eligibility Committee"***] described in subsection (d)(1)(B) and other qualified professionals, as appropriate, shall-	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
6. Reevaluation (continued)	(A) review existing evaluation data on the child, including evaluations and information provided by the parents of the child, current classroom-based assessments and observations, and teacher and related services providers observation; and (B) on the basis of that review, and input from the child's parents, identify what additional data, if any, are needed to determine-- (i) whether the child has a particular category of disability, as described in section 602(3), or, in case of a reevaluation of a child, whether the child continues to have such a disability; (ii) the present levels of performance and educational needs of the child; (iii) whether the child needs special education and related services, or in the case of a reevaluation of a child, whether the child continues to need special education and related services; and (iv) whether any additions or modifications to the special education and related services are needed to enable the child to meet the measurable annual goals set out in the individualized education program of the child and to participate, as appropriate, in the general curriculum. (2) **SOURCE OF DATA** - The local educational agency shall administer such tests and other evaluation materials as may be needed to produce the data identified by the IEP Team under paragraph (1)(B).	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
6. Reevaluation (continued)	(3) **PARENTAL CONSENT**- Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond. (4) **REQUIREMENTS IF ADDITIONAL DATA ARE NOT NEEDED** - If the IEP Team and other qualified professionals, as appropriate, determine that no additional data are needed to determine whether the child continues to be a child with a disability, the local educational agency-- (A) shall notify the child's parents of-- (i) that determination and the reasons for it; and (ii) the right of such parents to request an assessment to determine whether the child continues to be a child with a disability; and (B) shall not be required to conduct such an assessment unless requested to by the child's parents.	6/4/97
7. Non-academic and extracurricular services and activities Each LEA shall take steps to provide non-academic and extracurricular services and activities in such manner as is necessary to afford children with disabilities an equal opportunity for participation in those services and activities.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
8. Physical Education a. General. Physical education services, specially designed if necessary, must be made available to every child with a disability receiving FAPE. b. Regular physical education. Each child with a disability must be afforded the opportunity to participate in the regular physical education program available to nondisabled children unless - 1. the child is enrolled full time in a separate facility; or 2. the child needs specially designed physical education, as prescribed in the child's IEP. c. Special physical education. If specially designed physical education is prescribed in a child's IEP, the LEA responsible for the education of that child shall provide the services directly, or make arrangements for those services to be provided through other public or private programs. d. Education in separate facilities. The LEA responsible for the education of a child with a disability who is enrolled in a separate facility shall ensure that the child receives appropriate physical education services in compliance with paragraphs a and c of this section.	**SEC. 602. (25) SPECIAL EDUCATION** - The term `special education' means specially designed instruction, at no cost to parents, to meet the unique needs of a child with a disability, including-- (A) instruction conducted in the classroom, in the home, in hospitals and institutions, and in other settings; and (B) instruction in physical education.	6/4/97
B. Individualized Education Program 1. Responsibility The LEA shall ensure that an IEP is developed and implemented for each child with a disability in its jurisdiction, including such children placed in private schools or facilities.	**SEC. 614. (d) (2) REQUIREMENT THAT PROGRAM BE IN EFFECT -** **(A)** **IN GENERAL** - At the beginning of each school year, each local educational agency, State educational agency, or other State agency, as the case may be, shall have in effect, for each child with a disability in its jurisdiction, an individualized education program, as defined in paragraph (1)(A).	7/1/98

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	(B) PROGRAM FOR CHILD AGED 3 THROUGH 5 - In the case of a child with a disability aged 3 through 5 (or, at the discretion of the State educational agency, a 2 year-old child with a disability who will turn age 3 during the school year), an individualized family service plan that contains the material described in section 636, and that is developed in accordance with this section, may serve as the IEP of the child if using that plan as the IEP is-- (i) consistent with State policy; and (ii) agreed to by the agency and the child's parents	7/1/98
2. Accountability a. An IEP must: (1) Be in effect before special education and related services are provided to a child; and (2) Be developed within 30 calendar days of a determination that the child needs special education and related services, and be implemented as soon as possible following the IEP meeting. b. Each LEA is responsible for initiating and conducting meetings to develop, review and revise a child with a disability's IEP. c. Each LEA shall initiate and conduct meetings periodically to review each child's IEP and, where appropriate, revise its provisions. A meeting must be held for this purpose at least once a year. d. Each LEA must provide special education and related services to a child with a disability in accordance with an IEP.	**SEC. 614. (d)(4) REVIEW AND REVISION OF IEP -** **(A) IN GENERAL** - The local educational agency shall ensure that, subject to subparagraph (B), the IEP Team-- (i) reviews the child's IEP periodically, but not less than annually to determine whether the annual goals for the child are being achieved; and (ii) revises the IEP as appropriate to address-- (I) any lack of expected progress toward the annual goals and in the general curriculum, where appropriate; (II) the results of any reevaluation conducted under this section; (III) information about the child provided to, or by, the parents, as described in subsection (c)(1)(B); (IV) the child's anticipated needs; or (V) other matters. **(B) REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER** - The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the review and revision of the IEP of the child.	7/1/98

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
3. Participants in Meeting a. The LEA shall ensure that each meeting includes participants as follows: (1) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education; (2) The child's teacher; (3) One or both of the child's parents (see Parent Participation, §3.3 B.4); (4) The child, if appropriate; (5) Other individuals, at the discretion of the parents or LEA. b. For a child with a disability who has been evaluated for the first time, the LEA shall ensure that: (1) A member of the evaluation team participates in the meeting; or (2) The representative of the LEA, the child's teacher, or some other person is present at the meeting who is knowledgeable about the evaluation procedures used with the child and is familiar with the results of the evaluation. c. If a purpose of the IEP meeting is the consideration of transition services for a student, the public agency shall invite: (1) The student; and (2) A representative of any other agency that is likely to be responsible for providing or paying for transition services. (3) If the student does not attend, the LEA shall take other steps to ensure that the student's preferences and interests are considered; and (4) If an agency invited to send a representative to a meeting does not do so, the LEA shall take other steps to obtain the participation of the other agency in the planning of any transition services.	**SEC. 614. (d)(1)(B) INDIVIDUALIZED EDUCATION PROGRAM TEAM** - The term 'individualized education program team' or 'IEP Team' means a group of individuals composed of-- (i) the parents of a child with a disability; (ii) at least one regular education teacher of such child (if the child is, or may be, participating in the regular education environment); (iii) at least one special education teacher, or where appropriate, at least one special education provider of such child; (iv) a representative of the local educational agency who-- (I) is qualified to provide, or supervise the provision of, specially designed instruction to meet the unique needs of children with disabilities; (II) is knowledgeable about the general curriculum; and (III) is knowledgeable about the availability of resources of the local educational agency; (v) an individual who can interpret the instructional implications of evaluation results, who may be a member of the team described in clauses (ii) through (vi); (vi) at the discretion of the parent or the agency, other individuals who have knowledge or special expertise regarding the child, including related services personnel as appropriate; and (vii) whenever appropriate, the child with a disability.	7/1/98

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4. Parent Participation a. Each LEA shall take steps to ensure that one or both of the parents of the child with a disability are present at each meeting or are afforded the opportunity to participate, including: (1) Notifying the parents of the meeting early enough to ensure that they will have an opportunity to attend, and (2) Scheduling the meeting at a mutually agreed on time and place. b. The notice given the parents must indicate the purpose, time and location of the meeting, and who will be in attendance. c. If a purpose of the meeting is the consideration of transition services for a student, the notice must also: (1) Indicate this purpose; (2) Indicate that the LEA will invite the student; and (3) Identify any other agency that will be invited to send a representative. d. If neither parent can attend, then the LEA shall use other methods to ensure parent participation, including individual or conference telephone calls. e. A meeting may be conducted without the child's parent(s) attending if the LEA is unable to convince them that they should attend. In this case, the LEA must have a record of the attempts to arrange a mutually agreed on time and place, such as: (1) Detailed records of telephone calls made or attempted and the results of those calls; (2) Copies of correspondence sent to the parents and any responses; (3) Detailed records of visits made to the parents' home or place of employment and the results of those visits.		

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f. The LEA shall take whatever action is necessary to ensure that the parent understands the proceedings at a meeting, including arranging for an interpreter for parents who are deaf or whose native language is other than English. g. The LEA shall give the parent a copy of the IEP.		
not addressed in current state regulations	**SEC. 614. (d)(3) DEVELOPMENT OF IEP -** **(A) IN GENERAL-** In developing each child's IEP, the IEP Team, subject to subparagraph (C), shall consider-- (i) the strengths of the child and the concerns of the parents for enhancing the education of their child; and (ii) the results of the initial evaluation or most recent evaluation of the child. **(B) CONSIDERATION OF SPECIAL FACTORS-** The IEP Team shall-- (i) in the case of a child whose behavior impedes his or her learning or that of others, consider, when appropriate, strategies, including positive behavioral interventions, strategies, and supports to address that behavior; (ii) in the case of a child with limited English proficiency, consider the language needs of the child as such needs relate to the child's IEP; (iii) in the case of a child who is blind or visually impaired, provide for instruction in Braille and the use of Braille unless the IEP Team after an evaluation of the child's reading and writing skills, needs, and appropriate reading and writing media (including an evaluation of the child's future needs for instruction in Braille or the use of Braille), that instruction in Braille or the use of Braille is not appropriate for the child;	7/1/98

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	(iv) consider the communication needs of the child, and in the case of a child who is deaf or hard of hearing, consider the child's language and communication needs, opportunities for direct communications with peers and professional in the child's language and communication mode, academic level, and full range of needs, including opportunities for direct instruction in the child's language and communication mode; and (v) consider whether the child requires assistive technology devices and services. (C) **REQUIREMENT WITH RESPECT TO REGULAR EDUCATION TEACHER** - The regular education teacher of the child, as a member of the IEP Team, shall, to the extent appropriate, participate in the development of the IEP of the child, including the determination of appropriate positive behavioral interventions and strategies and the determination of supplementary aids and services, program modifications, and support for school personnel consistent with paragraph (1)(A)(iii).	7/1/98
5 Content of the Individualized Education Program The IEP for each child must include: a A statement of the child's present level of educational performance; (1) The statement should accurately describe the effect of the child's disability on the child's performance in any area of education that is affected including academic areas and non-academic areas. (2) The statement should be written in objective measurable terms, to the extent possible. Test scores, if appropriate, should be self-explanatory or an explanation should be included. (3) There should be a direct relationship between the present level of performance and the other components of the IEP.	**SEC.614.(d)(1)(A) INDIVIDUALIZED EDUCATION PROGRAM** - The term 'individualized education program' or 'IEP' means a written statement for each child with a disability that is developed, reviewed, and revised in accordance with this section and that includes-- (i) a statement of the child's present levels of educational performance, including-- (I) how the child's disability affects the child's involvement and progress in the general curriculum; or (II) for preschool children, as appropriate, how the disability affects the child's participation in appropriate activities;	7/1/98

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b	A statement of annual goals, including short-term instructional objectives;	**SEC. 614. (d)(1)(A)(ii)** a statement of measurable annual goals, including benchmarks or short-term objectives, related to-- (I) meeting the child's needs that result from the child's disability to enable the child to be involved in and progress in the general curriculum; and (II) meeting each of the child's other educational needs that result from the child's disability;	7/1/98
c	A statement of the specific special education and related services to be provided for the child, and the extent to which the child will be able to participate in regular educational programs.	**SEC.614.(d)(1)(A)(iii)** a statement of the special education and related services and supplementary aids and services to be provided to the child, or on behalf of the child, and a statement of the program modifications or supports for school personnel that will be provided for the child-- (I) to advance appropriately toward attaining the annual goals; (II) to be involved and progress in the general curriculum in accordance with clause (i) and to participate in and other nonacademic activities; and (III) to be educated and participate with other children with disabilities and nondisabled children in the activities described in this paragraph; (iv) an explanation of the extent, if any, to which the child will not participate with nondisabled children in the regular class and in the activities described in clause (iii);	7/1/98
d	The projected dates for initiation of services and the anticipated duration of the services (month, day, and year); and	**SEC.614.(d)(1)(A)(vi)** the projected date for the beginning of the services and modifications described in clause (iii), and the anticipated frequency, location, and duration of those services and modifications;	7/1/98
e	Appropriate objective criteria and evaluation procedures and schedules for determining, at least annually, whether the short-term instructional objectives are being achieved.	**SEC.614.(d)(1)(A)(viii)** a statement of-- (I) how the child's progress toward the annual goals described in clause (ii) will be measured; and (II) how the child's parents will be regularly informed (by such means as periodic report cards), at least as often as parents are informed of their nondisabled children's progress, of--	7/1/98

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	(aa) their child's progress toward the annual goals described in clause (ii); and (bb) the extent to which that progress is sufficient to enable the child to achieve the goals by the end of the year.	7/1/98
f. For students beginning in the sixth grade, the following information concerning the Virginia Literacy Passport Testing Program must be included: (1) Whether the student will participate in the Literacy Passport Testing Program (a decision to exempt the student from participating must be reviewed during the annual IEP review or sooner); (2) Whether the student will postpone taking any of the literacy tests (a decision to postpone must be reviewed during the annual IEP review or sooner); (3) Reasonable accommodations to take the literacy tests if the student needs them. The school division shall document on the IEP that the Literacy Passport Testing Program and the requirement that the student pass all of the literacy tests to receive a regular diploma have been presented to the parent.	**SEC.614.(d)(1)(A)(v)(I)** a statement of any individual modifications in the administration of State or districtwide assessments of student achievement that are needed in order for the child to participate in such assessment; and (II) if the IEP Team determines that the child will not participate in a particular State or districtwide assessment of student achievement (or part of such an assessment), a statement of-- (aa) why that assessment is not appropriate for the child; and (bb) how the child will be assessed;	7/1/98
g. The IEP for each student, beginning no later than age 16 (and at a younger age, if determined appropriate), must include a statement of the needed transition services including, if appropriate, a statement of each public agency's and each participating agency's responsibilities or linkages, or both, before the student leaves the school setting. The IEP must include the following areas: (1) Instruction; (2) Community experiences;	**SEC.614.(d)(1)(A)(vii)(I)** beginning at age 14, and updated annually, a statement of the transition service needs of the child under the applicable components of the child's IEP that focuses on the child's courses of study (such as participation in advanced-placement courses or a vocational education program); (II) beginning at age 16 (or younger, if determined appropriate by the IEP Team), a statement of needed transition services for the child, including, when appropriate, a statement of the interagency responsibilities or any needed linkages; and	7/1/98

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(3) The development of employment and other post-school adult living objectives; unless the IEP Committee determines that services are not needed in one or more of those areas. The IEP Committee must then include a statement to that effect together with the basis for that determination in the IEP.	(III) beginning at least one year before the child reaches the age of majority under State law, a statement that the child has been informed of his or her rights under this title, if any, that will transfer to the child on reaching the age of majority under section 615(m);	7/1/98
h. A statement as to whether or not the student will participate in Family Life Education.	*no corresponding section in the amendments*	
6. Agency Responsibilities for Transition Services a. If a participating agency fails to provide agreed-upon transition services contained in the IEP of a student with a disability, the public agency responsible for the student's education shall, as soon as possible, initiate a meeting for the purpose of identifying alternative strategies to meet the transition objectives and, if necessary, revising the student's IEP. b. Nothing in this part relieves any participating agency, including a State vocational rehabilitation agency, of the responsibility to provide or pay for any transition service that the agency would otherwise provide to students with disabilities who meet the eligibility criteria of that agency.	**SEC. 614. (d)(5) FAILURE TO MEET TRANSITION OBJECTIVES** - If a participating agency, other than the local educational agency, fails to provide the transition services described in the IEP in accordance with paragraph (1)(A)(vii), the local educational agency shall reconvene the IEP Team to identify alternative strategies to meet the transition objectives for the child set out in that program. **SEC.612.(a)(12) (B) OBLIGATION OF PUBLIC AGENCY -** (i) **IN GENERAL** - If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.	7/1/98 6/4/97

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	(ii) **REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY**- If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).	6/4/97
not addressed in current state regulations	**SEC. 614. (e) CONSTRUCTION** - Nothing in this section shall be construed to require the IEP Team to include information under one component of a child's IEP that is already contained under another component of such IEP.	6/4/97
7. Placements Each LEA placing the child shall ensure that: a. The educational placement of each child with a disability: (1) Is determined at least annually; (2) Is based on his IEP; and (3) Is as close as possible to the child's home. b. The various alternative placements, discussed in §3.3A2 of these regulations, are available, to the extent necessary, to implement the IEP for each child with a disability. c. Unless a child with a disability's IEP requires some other arrangement, the child is educated in the school which he would attend if nondisabled.	**SEC. 614. (f) EDUCATIONAL PLACEMENTS** - Each local educational agency or State educational agency shall ensure that the parents of each child with a disability are members of any group that makes decisions on the educational placement of their child.	6/4/97

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d. In selecting the least restrictive environment, consideration is given to any potential harmful effect on the child or on the quality of services which he needs. e. The placement decision shall include consideration of the child's social and personal needs, as well as the child's level of educational functioning.		
8. Private School Placement a. Before an LEA places a child with a disability in, or refers a child to, a private school or facility, the LEA shall initiate and conduct a meeting, in accordance with the preceding requirements, to develop an IEP for the child. b. Where a child is presently receiving the services of a private school or facility, or where the parents and the LEA agree, prior to the development of an IEP that a private school or facility may be required when the IEP is completed, the LEA shall ensure that a representative of the private school or facility attends the meeting. If the representative cannot attend, the local school division shall use other methods to ensure participation by the private school or facility, including individual or conference telephone calls. c. After a child with a disability enters a private school or facility, any meetings to review and revise the child's IEP may be initiated and conducted by the private school or facility at the discretion of the LEA. d. If the private school or facility initiates and conducts these meetings, the LEA shall ensure that the parents and a LEA representative: (1) Are involved in any decision affecting the child's IEP; and (2) Agree to any proposed changes in the program before those changes are implemented. e. When a private school or facility implements a child's IEP, responsibility for compliance with this part remains with the LEA.	**SEC. 612. (a)(10)(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES -** (i) **IN GENERAL** - Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State. (ii) **STANDARDS** - In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.	6/4/97

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f. Whenever an eligible child with a disability is placed in an approved private school or facility by a LEA, all rights extended to any child educated in public school programs shall be available to him.		
9. Children With Disabilities in Private Schools Not Placed or Referred by Public Agencies a. If a child with a disability has available a free appropriate public education and the parents choose to place the child in a private school or facility, then the local school division is not required to pay for the child's education at the private school or facility. However, the local school division shall make services available to the child as follows: (1) Each local school division shall provide special education and related services designed to meet the needs of private school children with disabilities residing in its jurisdiction; (2) Each local school division shall provide private school children with disabilities with genuine opportunities to participate in special education and related services consistent with the number of children and their needs.	**SEC. 612. (a)(10)(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS -** **(i)** **IN GENERAL**- To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f): (I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part. (II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law. **(ii)** **CHILD-FIND REQUIREMENT** - The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.	6/4/97

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b. The needs of private school children with disabilities, the number who will participate, and the types of special education and related services which the local school division will provide for them must be determined after consultation with persons knowledgeable of the needs of these children on a basis comparable to that used in providing for the participation of children with disabilities enrolled in public schools. c. A local school division may provide special education and related services to private school children with disabilities which are different from the special education and related services it provides to public school children, if: (1) The differences are necessary to meet the special needs of the private school children with disabilities; and (2) The special education and related services are comparable in quality, scope, opportunity for participation to those provided to public school children with needs of equal importance. d. Each LEA providing services to children enrolled in private schools shall maintain continuing administrative control and direction over those services.	**SEC. 612. (a)(10)(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY-** (i) **IN GENERAL**- Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility. (ii) **REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT**- If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment. (iii) **LIMITATION ON REIMBURSEMENT**- The cost of reimbursement described in clause (ii) may be reduced or denied-- (I) if-- (aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public expense; or	6/4/97

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	(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa); (II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or (III) upon a judicial finding of unreasonableness with respect to actions taken by the parents. (iv) **EXCEPTION** - Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if-- (I) the parent is illiterate and cannot write in English; (II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child; (III) the school prevented the parent from providing such notice; or (IV) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I).	6/4/97
10. Children with Disabilities on Homebound Instruction Homebound instruction shall be deemed appropriate for a child with a disability only when such placement is stipulated in the child's IEP and is in accordance with the requirements of the least restrictive environment.	*no corresponding section in the amendments*	

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not addressed in current state regulations	**SEC. 614. (d)(6) CHILDREN WITH DISABILITIES IN ADULT PRISONS -** **(A)** **IN GENERAL** - The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons: (i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments). (ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison. **(B)** **ADDITIONAL REQUIREMENT** - If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.	6/4/97
11. Suspension or Expulsion of Children with Disabilities a. Suspensions of 10 Days or Less A short term suspension is when the child is removed from class (i.e., an in-school suspension) or school for ten school days or less. It does not constitute a change in placement. The child is subject to normal disciplinary procedures whether or not there is a causal connection between the child's disability and the misconduct.	**SEC. 612. (a)(1) FREE APPROPRIATE PUBLIC EDUCATION-** **(A)** **IN GENERAL** - A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.	6/4/97

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b. Long-term Suspensions Greater Than 10 Days and Expulsions (1) When the child is removed from class or school for more than 10 consecutive school days, a determination must be made as to whether or not there is a direct causal relationship between the child's disability and the misconduct. (2) This determination must be made pursuant to the change in placement procedures by a committee with the following composition: (a) A representative of the LEA, other than the child's teacher, who is qualified to provide or supervise the provision of special education; (b) The child's teacher; (c) One or both of the child's parents; (d) The child, if appropriate; (e) Persons knowledgeable about the child, the meaning of the evaluation data, and the placement options; (f) Other individuals, at the discretion of the parents or LEA. (3) A series of suspensions which aggregate to more than 10 days may be considered a significant change in placement requiring reevaluation and procedural protections. Factors to consider in determining whether aggregate suspensions of greater than 10 days are long-term suspensions include length of each suspension, proximity of suspensions, and total amount of time suspended. (4) If there is a causal connection or if the child was inappropriately placed at the time of the misconduct, the child may not be expelled, nor may the LEA impose a long-term suspension. If there is no causal connection and if the child was appropriately placed at the time of the misconduct, the child may be disciplined the same as a nondisabled child.	**SEC. 615. (k) PLACEMENT IN ALTERNATIVE EDUCATIONAL SETTING -** **(1) AUTHORITY OF SCHOOL PERSONNEL -** (A) School personnel under this section may order a change in the placement of a child with a disability-- (i) to an appropriate interim alternative educational setting, another setting, or suspension, for not more than 10 school days (to the extent such alternatives would be applied to children without disabilities), and (ii) to an appropriate interim alternative educational setting for the same amount of time that a child without a disability would be subject to discipline, but for not more than 45 days if-- (I) the child carries a weapon to school or to a school function under the jurisdiction of a State or a local educational agency; or (II) the child knowingly possesses or uses illegal drugs or sells or solicits the sale of a controlled substance while at school or a school function under the jurisdiction of a State or local educational agency. (B) Either before or not later than 10 days after taking a disciplinary action described in subparagraph (A)-- (i) if the local educational agency did not conduct a functional behavioral assessment and implement a behavioral intervention plan for such child before the behavior that resulted in the suspension described in subparagraph (A), the agency shall convene an IEP meeting to develop an assessment plan to address that behavior; or	6/4/97

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(5) In the case of an expulsion or long-term suspension, parental consent is not required. c Dangerous Student With a Disability LEAs may not unilaterally change the placement of a student with dangerous behavior when the misconduct is caused by the disability. LEAs, however, may use normal disciplinary measures for a child who exhibits dangerous behavior to include, for example, time outs or suspension up to 10 days. An LEA may only impose an expulsion or long-term suspension on a student with a disability whose misconduct has been determined to be caused by his disability by obtaining an injunction, based on dangerousness of the student, from a court of competent jurisdiction.	(ii) if the child already has a behavioral intervention plan, the IEP Team shall review the plan and modify it, as necessary, to address the behavior **(2) AUTHORITY OF HEARING OFFICER** - A hearing officer under this section may order a change in the placement of a child with a disability to an appropriate interim alternative educational setting for not more than 45 days if the hearing officer-- (A) determines that the public agency has demonstrated by substantial evidence that maintaining the current placement of such child is substantially likely to result in injury to the child or to others; (B) considers the appropriateness of the child's current placement; (C) considers whether the public agency has reasonable efforts to minimize the risk of harm in the child's current placement, including the use of supplementary aids and services; and (D) determines that the interim alternative educational setting meets the requirements of paragraph (3)(B). **(3) DETERMINATION OF SETTING** - **(A) IN GENERAL**- The alternative educational setting described in paragraph (1)(A)(ii) shall be determined by the IEP Team. **(B) ADDITIONAL REQUIREMENTS** - Any interim alternative educational setting in which a child is placed under paragraph (1) or (2) shall-- (i) be selected so as to enable the child to continue to participate in the general curriculum, although in another setting, and to continue to receive those services and modifications, including those described in the child's current IEP, that will enable the child to meet the goals set out in that IEP; and	6/4/97

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11. Suspension or Expulsion of Children with Disabilities (continued)	(ii) include services and modifications designed to address the behavior described in paragraph (1) or paragraph (2) so that it does not recur. (4) **MANIFESTATION DETERMINATION REVIEW** - (A) **IN GENERAL** - If a disciplinary action is contemplated as described in paragraph (1) or paragraph (2) for a behavior of a child with a disability described in either of those paragraphs, or if a disciplinary action involving a change of placement for more than 10 days is contemplated for a child with a disability who has engaged in other behavior that violated any rule or code of conduct of the local educational agency that applies to all children-- (i) not later than the date on which the decision to take that action is made, the parents shall be notified of that decision and of all procedural safeguards accorded under this section; and (ii) immediately, if possible, but in no case later than 10 school days after the date on which the decision to take that action is made, a review shall be conducted of the relationship between the child's disability and the behavior subject to the disciplinary action (B) **INDIVIDUALS TO CARRY OUT REVIEW**- A review described in subparagraph (A) shall be conducted by the IEP Team and other qualified personnel. (C) **CONDUCT OF REVIEW**- In carrying out a review described in subparagraph (A), the IEP Team may determine that the behavior of the child was not a manifestation of such child's disability only if the IEP Team-- (i) first considers, in terms of the behavior subject to disciplinary action, all relevant information, including--	6/4/97

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11 - Suspension or Expulsion of Children with Disabilities (continued)	(I) evaluation and diagnostic results, including such results or other relevant information supplied by the parents of the child; (II) observations of the child; and (III) the child's IEP and placement; and (ii) then determines that-- (I) in relationship to the behavior subject to disciplinary action, the child's IEP and placement were appropriate and the special education services, supplementary aids and services, and behavior intervention strategies were provided consistent with the child's IEP and placement; (II) the child's disability did not impair the ability of the child to understand the impact and consequences of the behavior subject to disciplinary action; and (III) the child's disability did not impair the ability of the child to control the behavior subject to disciplinary action. **(5) DETERMINATION THAT BEHAVIOR WAS NOT MANIFESTATION OF DISABILITY -** **(A) IN GENERAL**- If the result of the review described in paragraph (4) is a determination, consistent with paragraph (4)(C), that the behavior of the child with a disability was not a manifestation of the child's disability, the relevant disciplinary procedures applicable to children without disabilities may be applied to the child in the same manner in which they would be applied to children without disabilities, except as provided in section 612(a)(1).	6/4/97

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11 Suspension or Expulsion of Children with Disabilities (continued)	(B) **ADDITIONAL REQUIREMENT**- If the public agency initiates disciplinary procedures applicable to all children, the agency shall ensure that the special education and disciplinary records of the child with a disability are transmitted for consideration by the person or persons making the final determination regarding the disciplinary action. (6) PARENT APPEAL - (A) IN GENERAL - (i) If the child's parent disagrees with a determination that the child's behavior was not a manifestation of the child's disability or with any decision regarding placement, the parent may request a hearing. (ii) The State or local educational agency shall arrange for an expedited hearing in any case described in this subsection when requested by a parent. (B) REVIEW OF DECISION - (i) In reviewing a decision with respect to the manifestation determination, the hearing officer shall determine whether the public agency has demonstrated that the child's behavior was not a manifestation of such child's disability consistent with the requirements of paragraph (4)(C). (ii) In reviewing a decision under paragraph (1)(A)(ii) to place the child in an interim alternative educational setting, the hearing officer shall apply the standards set out in paragraph (2).	6/4/97

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11 Suspension or Expulsion of Children with Disabilities (continued)	(7) **PLACEMENT DURING APPEALS -** (A) **IN GENERAL** - When a parent requests a hearing regarding a disciplinary action described in paragraph (1)(A)(ii) or paragraph (2) to challenge the interim alternative educational setting or the manifestation determination, the child shall remain in the interim alternative educational setting pending the decision of the hearing officer or until the expiration of the time period provided for in paragraph (1)(A)(ii) or paragraph (2), whichever occurs first, unless the parent and the State or local educational agency agree otherwise. (B) **CURRENT PLACEMENT**- If a child is placed in an interim alternative educational setting pursuant to paragraph (1)(A)(ii) or paragraph (2) and school personnel propose to change the child's placement after expiration of the interim alternative placement, during the pendency of any proceeding to challenge the proposed change in placement, the child shall remain in the current placement (the child's placement prior to the interim alternative educational setting), except as provided in subparagraph (C). (C) **EXPEDITED HEARING -** (i) If school personnel maintain that it is dangerous for the child to be in the current placement (placement prior to removal to the interim alternative education setting) during the pendency of the due process proceedings, the local educational agency may request an expedited hearing. (ii) In determining whether the child may be placed in the alternative educational setting or in another appropriate placement ordered by the hearing officer, the hearing officer shall apply the standards set out in paragraph (2).	6/4/97

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11. Suspension or Expulsion of Children with Disabilities (continued)	**(8) PROTECTIONS FOR CHILDREN NOT YET ELIGIBLE FOR SPECIAL EDUCATION AND RELATED SERVICES -** **(A) IN GENERAL** - A child who has not been determined to be eligible for special education and related services under this part and who has engaged in behavior that violated any rule or code of conduct of the local educational agency, including any behavior described in paragraph (1), may assert any of the protections provided for in this part if the local educational agency had knowledge (as determined in accordance with this paragraph) that the child was a child with a disability before the behavior that precipitated the disciplinary action occurred. **(B) BASIS OF KNOWLEDGE**- A local educational agency shall be deemed to have knowledge that a child is a child with a disability if-- (i) the parent of the child has expressed concern in writing (unless the parent is illiterate or has a disability that prevents compliance with the requirements contained in this clause) to personnel of the appropriate educational agency that the child is in need of special education and related services; (ii) the behavior or performance of the child demonstrates the need for such services; (iii) the parent of the child has requested an evaluation of the child pursuant to section 614; or (iv) the teacher of the child, or other personnel of the local educational agency, has expressed concern about the behavior or performance of the child to the director of special education of such agency or to other personnel of the agency.	6/4/97

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11. Suspension or Expulsion of Children with Disabilities (continued)	(C) **CONDITIONS THAT APPLY IF NO BASIS OF KNOWLEDGE -** (i) **IN GENERAL**- If a local educational agency does not have knowledge that a child is a child with a disability (in accordance with subparagraph (B)) prior to taking disciplinary measures against the child, the child may be subjected to the same disciplinary measures as measures applied to children without disabilities who engaged in comparable behaviorsconsistent with clause (ii). (ii) **LIMITATIONS**- If a request is made for an evaluation of a child during the time period in which the child is subjected to disciplinary measures under paragraph (1) or (2), the evaluation shall be conducted in an expedited manner. If the child is determined to be a child with a disability, taking into consideration information from the evaluation conducted by the agency and information provided by the parents, the agency shall provide special education and related services in accordance with the provisions of this part, except that, pending the results of the evaluation, the child shall remain in the educational placement determined by school authorities. (9) **REFERRAL TO AND ACTION BY LAW ENFORCEMENT AND JUDICIAL AUTHORITIES -** (A) Nothing in this part shall be construed to prohibit an agency from reporting a crime committed by a child with a disability to appropriate authorities or to prevent State law enforcement and judicial authorities from exercising their responsibilities with regard to the application of Federal and State law to crimes committed by a child with a disability.	6/4/97

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11. Suspension or Expulsion of Children with Disabilities (continued)	(B) An agency reporting a crime committed by a child with a disability shall ensure that copies of the special education and disciplinary records of the child are transmitted for consideration by the appropriate authorities to whom it reports the crime. (10) **DEFINITIONS** - For purposes of this subsection, the following definitions apply: (A) **CONTROLLED SUBSTANCE** - The term 'controlled substance' means a drug or other substance identified under schedules I, II, III, IV, or V in section 202(c) of the Controlled Substances Act (21 U.S.C. 812(c)). (B) **ILLEGAL DRUG**- The term 'illegal drug'-- (i) means a controlled substance; but (ii) does not include such a substance that is legally possessed or used under the supervision of a licensed health-care professional or that is legally possessed or used under any other authority under that Act or under any other provision of Federal law. (C) **SUBSTANTIAL EVIDENCE** - The term 'substantial evidence' means beyond a preponderance of the evidence. (D) **WEAPON** - The term 'weapon' has the meaning given the term 'dangerous weapon' under paragraph (2) of the first subsection (g) of section 930 of title 18, United States Code.	6/4/97
12. Assistive Technology Each LEA shall ensure that assistive technology devices or assistive technology services, or both, are made available to a child with a disability if required as part of the child's: a. Special education; b. Related services; or c. Supplementary aids and services.	*(for a complete description of "Assistive Technology", refer to the definitions section of IDEA Amendments, 602(1) and (2), pages 4 and 5 or this document)* **SEC.612. (a) (12)(B) OBLIGATION OF PUBLIC AGENCY** - (i) **IN GENERAL** - If any public agency other than an educational agency is otherwise obligated under Federal or State law,	6/4/97

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	or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.	6/4/97
C. **Educational Interpreting Services** 1. Educational personnel providing interpreting services for students using sign language shall have achieved a Virginia Quality Assurance Screening Level III or hold any Registry of Interpreters for the Deaf Certificate (excluding Certificate of Deaf Interpretation). 2. Educational personnel providing interpreting services for students using Cued Speech shall have achieved a Virginia Quality Assurance Screening Cued Speech Level III or National Cued Speech Association Cued Speech Transliterator Certificate. 3. Educational personnel providing interpreting services for students requiring oral interpreting shall have met Virginia Quality Assurance Screening's minimum requirements for competency on the Registry of Interpreters for the Deaf Code of Ethics.	*{There is no language specific to educational interpreters in IDEA. The qualified personnel language that led to establishment of standards remains intact.}* **SEC.612. (a)(15) PERSONNEL STANDARDS -** (A) **IN GENERAL-** The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained. (B) **STANDARDS DESCRIBED** - Such standards shall-- (i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;	6/4/97

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4. An individual providing interpreting services for students using sign language or Cued Speech who does not hold the required Virginia Quality Assurance Screening level or Registry of Interpreters for the Deaf certificate (excluding certification in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate may be employed according to all of the following criteria: a. The individual must have a Virginia Quality Assurance Screening Level I upon hiring date in any local education agency or state operated program in Virginia (or the implementation date of these regulations, whichever is later). The local education agency/state operated program shall inform the Department of Education of the person's name, social security number and hiring date; and b. Each individual must achieve Level III Virginia Quality Assurance Screening or any Registry of Interpreters for the Deaf Certificate (excluding certification in reverse skills) or a National Cued Speech Association Cued Speech Transliterator Certificate by the third anniversary date of hiring in any local education agency or state operated program (or implementation date of these regulations, whichever is later); and c. The local education agency/state operated program shall annually submit a professional development plan to the Virginia Department of Education on behalf of the individual.		

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§3.4 **Procedural Safeguards** A Due Process 1 Procedural Safeguards Each LEA shall establish and implement procedural safeguards as follows: a. The parent of a child with a disability, upon request, shall be afforded an opportunity to inspect and review all education records involving: (1) The identification, evaluation or educational placement of the child; or (2) The provision of a free appropriate public education to the child. (See: Management of the Student's Scholastic Records)	**SEC. 615. PROCEDURAL SAFEGUARDS.** **(a) ESTABLISHMENT OF PROCEDURES** - Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies. **(b) TYPES OF PROCEDURES** - The procedures required by this section shall include-- (1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child;	6/4/97
not addressed in current state regulations	**SEC. 615. (m) TRANSFER OF PARENTAL RIGHTS AT AGE OF MAJORITY-** **(1) IN GENERAL**- A State that receives amounts from a grant under this part may provide that, when a child with a disability reaches the age of majority under State law (except for a child with a disability who has been determined to be incompetent under State law)-- (A) the public agency shall provide any notice required by this section to both the individual and the parents; (B) all other rights accorded to parents under this part transfer to the child; (C) the agency shall notify the individual and the parents of the transfer of rights; and (D) all rights accorded to parents under this part transfer to children who are incarcerated in an adult or juvenile Federal, State, or local correctional institution.	6/4/97

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	(2) **SPECIAL RULE** - If, under State law, a child with a disability who has reached the age of majority under State law, who has not been determined to be incompetent, but who is determined not to have the ability to provide informed consent with respect to the educational program of the child, the State shall establish procedures for appointing the parent of the child, or if the parent is not available, another appropriate individual, to represent the educational interests of the child throughout the period of eligibility of the child under this part.	6/4/97
b. The parent of a child with a disability shall be provided, on request, information as to where an independent educational evaluation (IEE) may be obtained. c. The parent of a child with a disability shall have the right to obtain an IEE of the child: (1) Such IEE will be at public expense if the parent disagrees with the evaluation obtained by the LEA; however, the LEA shall have the right to initiate a due process hearing to show that its evaluation is appropriate. If the final decision is that the evaluation is appropriate then, the parent still has the right to an IEE, but not at public expense. (2) Whenever an IEE is at public expense, the criteria under which the evaluation is obtained, including the location of the evaluation and the qualifications of the examiner, must be the same as the criteria which the LEA uses when it initiates an evaluation.	*no corresponding section in the amendments*	

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(3) The results of the IEE whether or not at public expense: (a) Must be considered by the LEA in any decision regarding a free appropriate public education for the child, and (b) May be presented as evidence at a hearing under §3.4A2 of these regulations.	*no corresponding section in the amendments*	
d The parent of a child with a disability shall be given written notice within a reasonable time before the LEA proposes or refuses to initiate or change the identification, evaluation, or educational placement of the child, or the provision of free appropriate public education for the child.	**SEC.615.(b) TYPES OF PROCEDURES** -The procedures required by this section shall include - (3) written prior notice to the parents of the child whenever such agency-- (A) proposes to initiate or change; or (B) refuses to initiate or change; the identification, evaluation, or educational placement of the child, in accordance with subsection (c), or the provision of a free appropriate public education to the child;	6/4/97
	SEC. 615. (d) PROCEDURAL SAFEGUARDS NOTICE - (1) IN GENERAL - A copy of the procedural safeguards available to the parents of a child with a disability shall be given to the parents, at a minimum-- (A) upon initial referral for evaluation; (B) upon each notification of an individualized education program meeting and upon reevaluation of the child; and (C) upon registration of a complaint under (b)(6)	6/4/97

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c. The notice shall include: (1) A full explanation of all procedural safeguards available to the parents; (2) A description of the action proposed or refused by the LEA, an explanation of why the LEA proposes or refuses to take the action, and a description of any options the LEA considered and the reasons why those options were rejected; (3) A description of the nature, purpose, and use of any evaluation procedure, test, record, or report the LEA used as a basis for the proposal or refusal; and (4) A description of any other factors which are relevant to the LEA's proposal or refusal.	**SEC. 615. (d) (2) CONTENTS** - The procedural safeguards notice shall include a full explanation of the procedural safeguards, written in the native language of the parents, unless it clearly is not feasible to do so, and written in an easily understandable manner, available under this section and under regulations promulgated by the Secretary relating to-- (A) independent educational evaluation; (B) prior written notice; (C) parental consent; (D) access to educational records; (E) opportunity to present complaints; (F) the child's placement during pendency of due process proceedings; (G) procedures for students who are subject to placement in an interim alternative educational setting; (H) requirements for unilateral placement by parents of children in private schools at public expense; (I) mediation; (J) due process hearings, including requirements for disclosure of evaluation results and recommendations; (K) State-level appeals (if applicable in that State); (L) civil actions; and (M) attorneys' fees. **SEC. 615. (c) CONTENT OF PRIOR WRITTEN NOTICE** - The notice required by subsection (b)(3) shall include-- (1) a description of the action proposed or refused by the agency; (2) an explanation of why the agency proposes or refuses to take the action; (3) a description of any other options that the agency considered and the reasons why those options were rejected;	6/4/97

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	(4) a description of each evaluation procedure, test, record, or report the agency used as a basis for the proposed or refused action; (5) a description of any other factors that are relevant to the agency's proposal or refusal;	6/4/97
not addressed in current state regulations	(6) a statement that the parents of a child with a disability have protection under the procedural safeguards of this part and, if this notice is not an initial referral for evaluation, the means by which a copy of a description of the procedural safeguards can be obtained; and (7) sources for parents to contact to obtain assistance in understanding the provisions of this part.	6/4/97
f. Information contained in the notice shall be: (1) Written in language understandable by the public; and (2) Provided in the native language of the parent or other mode of communication used by the parent, unless it is clearly not feasible to do so. (3) If the native language or other mode of communication of the parent is not a written language, then the LEA shall take steps to ensure: (a) That the notice is translated orally or by other means to the parent in his or her native language or other mode of communication; (b) That the parent understands the content of the notice; and (c) That there is documentation that the requirements in paragraphs (a) and (b) have been met.	**SEC. 615. (b)(4)** procedures designed to ensure that the notice required by paragraph (3) is in the native language of the parents, unless it clearly is not feasible to do so;	6/4/97

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g Written parental consent shall be obtained before: (1) Pre-placement evaluation; (2) Initial placement of a child with a disability in a program providing special education and related services; and (3) Any change in program/placement, including any partial or complete termination of special education and services, except for expulsions and graduation. Consent for placement may be revoked up until the first day of the placement.	*no corresponding section in the amendments*	
h. Written parental consent shall be obtained for the following: (1) Any change in identification of a child with a disability and (2) Any evaluation which is conducted other than the triennial evaluations. (Parental consent is not necessary for reviewing the child's records for conducting a reevaluation.) Consent for initial placement may be revoked by the parent at any time prior to the first day of that placement.	SEC. 614. (a)(1)(C) **PARENTAL CONSENT**- (i) **IN GENERAL**- The agency proposing to conduct an initial evaluation to determine if the child qualifies as a child with a disability as defined in section 602(3)(A) or 602(3)(B) shall obtain an informed consent from the parent of such child before the evaluation is conducted. Parental consent for evaluation shall not be construed as consent for placement for receipt of special education and related services. (ii) **REFUSAL**- If the parents of such child refuse consent for the evaluation, the agency may continue to pursue an evaluation by utilizing the mediation and due process procedures under section 615, except to the extent inconsistent with State law relating to parental consent. **SEC. 614.(c)(3) PARENTAL CONSENT**- Each local educational agency shall obtain informed parental consent, in accordance with subsection (a)(1)(C), prior to conducting any reevaluation of a child with a disability, except that such informed parent consent need not be obtained if the local educational agency can demonstrate that it had taken reasonable measures to obtain such consent and the child's parent has failed to respond.	6/4/97

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i Except for preplacement evaluation and initial placement, consent or refusal to give consent for those other situations requiring consent shall be given by the parent to the LEA within ten administrative working days after notice is received. If the parent fails to notify the LEA within ten administrative working days, the LEA may proceed as if consent had been granted, and the parent must initiate due process to contest the action. If the parent refuses to give consent, the LEA shall attempt to resolve parental withholding of consent through informal means. If those informal methods are not successful, the LEA must use other measures as necessary to ensure that, except for preplacement evaluation and initial placement, parental refusal to consent will not result in a denial of a necessary free appropriate public education.	*no corresponding section in the amendments*	
2. Impartial Due Process Hearing Each LEA or the parent of a child determined or believed to have a disability, shall have the right to initiate a hearing when a disagreement occurs on matters relating to identification, evaluation (including determination of whether or not an IEE at public expense is appropriate), or educational placement of the child or the provision of a free appropriate public education for the child. The LEA may initiate due process to appeal parental withholding of consent where these regulations require the LEA to obtain consent.	**SEC.615. (b) TYPES OF PROCEDURES** - The procedures required by this section *{Procedural Safeguards}* shall include....... (6) an opportunity to present complaints with respect to any matter relating to the identification, evaluation, or the provision of a free appropriate public education to such child; (7) procedures that require the parent of a child with a disability, or the attorney representing the child, to provide notice (which shall remain confidential)-- (A) to the State educational agency or local educational agency, as the case may be, in the complaint filed under paragraph (6); and (B) that shall include -- (I) the name of the child, the address of the residence of the child, and the name of the school the child is attending; (ii) a description of the nature of the problem of the child relating to such proposed initiation or change, including facts relating to such problem; and	6/4/97

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	(iii) a proposed resolution of the problem to the extent known and available to the parents at the time; and (8) procedures that require the State educational agency to develop a model form to assist parents in filing a complaint in accordance with paragraph (7). **SEC. 615. (f) IMPARTIAL DUE PROCESS HEARING -** (1) **IN GENERAL** - Whenever a complaint has been received under subsection (b)(6) or (k) of this section, the parents involved in such complaint shall have an opportunity for an impartial due process hearing, which shall be conducted by the State educational agency or by the local educational agency, as determined by State law or by the State educational agency. (2) **DISCLOSURE OF EVALUATIONS AND RECOMMENDATIONS -** (A) **IN GENERAL** - At least 5 business days prior to a hearing conducted pursuant to paragraph (1), each party shall disclose to all other parties all evaluations completed by that date and recommendations based on the offering party's evaluations that the party intends to use at the hearing. (B) **FAILURE TO DISCLOSE**- A hearing officer may bar any party that fails to comply with subparagraph (A) from introducing the relevant evaluation or recommendation at the hearing without the consent of the other party.	6/4/97

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3. Child's Status During Proceedings The child's status during proceedings shall be as follows: a. During the pendency of any administrative hearing or appeal or during the pendency of any judicial proceeding regarding these regulations, unless the LEA and the parent of the child agree otherwise, the child must remain in his current educational placement. While the placement may not be changed, this does not preclude using normal procedures for dealing with children who are endangering themselves or others. Such procedures do not include expulsion or suspension over ten days; however, the procedures may include time-out, detention, restriction of privileges, or temporary suspension up to ten days. b. If the issue involves an application for initial admission to public school, the child of school age, with consent of the parent, must be placed in a public school program until the completion of all proceedings.	**SEC. 615. (j) MAINTENANCE OF CURRENT EDUCATIONAL PLACEMENT** - Except as provided in subsection (k)(7), during the pendency of any proceedings conducted pursuant to this section, unless the State or local educational agency and the parents otherwise agree, the child shall remain in the then-current educational placement of such child, or, if applying for initial admission to a public school, shall, with the consent of the parents, be placed in the public school program until all such proceedings have been completed.	6/4/97
4. Mediation The regulations do not preclude the use of mediation in the resolution of differences, but mediation shall not be used to deny or delay a parent's rights. Such mediation may be conducted only by personnel who were not previously involved in the particular case. However, such mediation shall not extend the resolution of a hearing beyond the 45 calendar days unless otherwise approved and documented as in the best interests of the child by the hearing officer upon request of the parties. The hearing officer shall notify the parties and the SEA in writing of the specific number of days to be allowed for mediation.	**SEC. 615. (b)(5)** an opportunity for mediation in accordance with subsection (e); **SEC. 615. (e) MEDIATION -** **(1)** **IN GENERAL** - Any State educational agency or local educational agency that receives assistance under this part shall ensure that procedures are established and implemented to allow parties to disputes involving any matter described in subsection (b)(6) to resolve such disputes through a mediation process which, at a minimum, shall be available whenever a hearing is requested under subsection (f) or (k).	6/4/97

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4. Mediation (continued)	**SEC. 615. (e)(2) REQUIREMENTS** - Such procedures shall meet the following requirements: (A) The procedures shall ensure that the mediation process-- (i) is voluntary on the part of the parties; (ii) is not used to deny or delay a parent's right to a due process hearing under subsection (f), or to deny any other rights afforded under this part; and (iii) is conducted by a qualified and impartial mediator who is trained in effective mediation techniques. (B) A local educational agency or a State agency may establish procedures to require parents who choose not to use the mediation process to meet, at a time and location convenient to the parents, with a disinterested party who is under contract with-- (i) a parent training and information center or community parent resource center in the State established under section 682 or 683, or (ii) an appropriate alternative dispute resolution entity; to encourage the use, and explain the benefits, of the mediation process to the parents. (C) The State shall maintain a list of individuals who are qualified mediators and knowledgeable in laws and regulations relating to the provision of special education and related services. (D) The State shall bear the cost of the mediation process, including the costs of meetings described in subparagraph (B). (E) Each session in the mediation process shall be scheduled in a timely manner and shall be held in a location that is convenient to the parties to the dispute.	6/4/97

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4 Mediation (continued)	(F) An agreement reached by the parties to the dispute in the mediation process shall be set forth in a written mediation agreement. (G) Discussions that occur during the mediation process shall be confidential and may not be used as evidence in any subsequent due process hearings or civil proceedings and the parties to the mediation process may be required to sign a confidentiality pledge prior to the commencement of such process.	6/4/97
5. Commencement of the Due Process Hearing a. Request for a hearing shall be made in writing to the LEA or other public agency board as appropriate. b. The LEA shall inform the parent of any free or low-cost legal or other relevant services available in the area as well as the attorney fees provision of §3.4A12 when: (1) The parent requests the information; or, (2) The parent or the LEA initiate(s) a hearing. c. The LEA shall ensure that the Virginia Supreme Court appoints a hearing officer within five administrative working days following the request for a hearing to facilitate compliance with the 45 calendar days timeline.	*no corresponding section in the amendments*	
6. Qualifications, Removal, Substitution and Challenge of Hearing Officers "Impartial Hearing Officer" means a person selected from a list maintained by the Office of the Executive Secretary of the Supreme Court of Virginia. A hearing may not be conducted: a. By a person employed by an agency involved with the care or education of the child; or b. By a person having a personal or professional interest which would conflict with his or her objectivity in the hearing. A hearing officer is not an employee of the LEA or SEA solely because he or she is paid by the agency to serve as a hearing officer.	**SEC.615. (f)(3) LIMITATION ON CONDUCT OF HEARING -** A hearing conducted pursuant to paragraph (1) may not be conducted by an employee of the State educational agency or the local educational agency involved in the education or care of the child.	6/4/97

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Appointment, qualifications, retention, training, selection, removal and disqualification of Hearing Officers are governed by the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia.		
7. Responsibilities of LEA - Pre-Hearing a. The confirmation of the appointment of the hearing officer by the LEA shall be done in such a manner as to protect the confidentiality of the parent(s) and the child. All necessary information shall be forwarded promptly to the hearing officer, together with the official request for a hearing in order to ensure that timelines are maintained. b. The LEA shall send a copy of the correspondence confirming the appointment of a hearing officer along with a copy of the request for a hearing to the SEA within five administrative working days of the appointment of a hearing officer. c. The LEA shall arrange for recording equipment to be set up, or a stenographer to be present, in the hearing room. The LEA shall also ensure that the recording equipment, if used, is reliable and working and that the recording is clear and can be transcribed, if necessary. A complete, accurate, written verbatim transcript of the proceedings need not be made at the conclusion of the hearing, unless the hearing officer needs it for review prior to rendering a decision. When there is an appeal of the decision, a verbatim copy of the recording or transcript shall be supplied to the parties to the appeal, upon request, and free of charge. d. Each LEA shall keep a list of the persons who serve as hearing officers. The list must include a statement of the qualifications of each of those persons.	*no corresponding section in the amendments*	

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8 Responsibilities of the Hearing Officer - Pre-Hearing a. The hearing officer shall, within five administrative working days of appointment, secure a time, date and location for the hearing which are convenient to both parties, and notify both parties to the hearing and the SEA, in writing, of the time, date and location of the hearing. b. The hearing officer shall ascertain whether or not the parties will have attorneys at the hearing. If so, the hearing officer shall send copies of correspondence to the attorneys of the parties. c. The hearing officer shall ascertain from the parents whether the hearing will be open. d. The hearing officer shall ensure that a stenographer or recording equipment is present at the hearing and ensure that testimony is clearly recorded, either by the stenographer or recording equipment, to permit an accurate record of the proceedings. If a tape recorder is used, the hearing officer shall be provided a written list of speakers in order of appearance, and at the beginning of the hearing identify on tape each speaker's title, position, and interest in the proceeding. Thereafter, each speaker, prior to addressing the hearing, shall state his name for the record. e. The hearing officer shall receive a list of witnesses and documentary evidence for the hearing no later than five administrative working days prior to the hearing. f. The hearing officer may schedule a pre-hearing conference to be attended by the parties and attorneys, if appropriate. Such a conference may be requested by the hearing officer or the parties to the hearing to clarify or eliminate issues.	*no corresponding section in the amendments*	

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g. The hearing officer has power to issue subpoenas requiring testimony or the productions of books, papers, and physical or other evidence. (1) The hearing officer may procure an order of enforcement for a subpoena in the circuit court of the jurisdiction in which the hearing is to be held. (2) Any person so subpoenaed may petition the circuit court for a decision regarding the validity of such subpoena if the hearing officer does not question or modify the subpoena after objection thereto. h. The hearing officer shall ensure that the LEA has appointed a surrogate parent who is acting to protect the educational interests and rights of the child in accordance with §3.5 of these regulations.	*no corresponding section in the amendments*	
9. Rights of Parties to the Hearing a. Any party to a hearing shall have the right to: (1) Be accompanied and advised by counsel and/or by individuals with special knowledge or training concerning the problems of children with disabilities without being in violation of the provisions of §54.1-3904 of the Code of Virginia as amended. (2) Present evidence and confront, cross-examine, and compel the attendance of witnesses. 3) Prohibit the introduction of any evidence at the hearing that has not been disclosed to the other party at least five administrative working days before the hearing. (4) Receive written findings of fact and decisions rendered by the hearing officer.	**SEC. 615. (h) SAFEGUARDS**- Any party to a hearing conducted pursuant to subsection (f) or (k), or an appeal conducted pursuant to subsection (g), shall be accorded-- (1) the right to be accompanied and advised by counsel and by individuals with special knowledge or training with respect to the problems of children with disabilities; (2) the right to present evidence and confront, cross-examine, and compel the attendance of witnesses; (3) the right to a written, or, at the option of the parents, electronic verbatim record of such hearing; and (4) the right to written, or, at the option of the parents, electronic findings of fact and decisions (which findings and decisions shall be made available to the public consistent with the requirements of section 617(c) (relating to the confidentiality of data, information, and records) and shall also be transmitted to the advisory panel established pursuant to section 612(a)(21)).	6/4/97

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b. The parent(s) involved in a hearing must be given the right to: (1) Have the child who is the subject of the hearing present; (2) Open the hearing to the public; (3) Receive a copy of the implementation plan; (4) Obtain the written or electronic verbatim record of the hearing upon request and free of charge.		
10. Due Process Hearing Procedure a. The rights of all parties to the hearing shall be protected by the hearing officer. b. The hearing officer shall ensure that an atmosphere conducive to impartiality and fairness is maintained at all times in the hearing. The hearing officer may excuse witnesses after they testify to limit the number of expert witnesses present at the same time or to sequester witnesses during the hearing. c. The hearing officer may stop unnecessarily hostile or irrelevant pursuits in questioning. d. The hearing officer shall remand the matter in dispute to a conference between the parties only when informal resolution and discussion appear to be desirable and constructive. This action shall not be used to delay or deprive the parties of their rights and shall be exercised only when the best interest of the child will be served. e. The hearing officer may require an independent educational evaluation of the child. This evaluation shall be at public expense and shall be conducted in accordance with the regulations governing evaluation and assessment.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
f. The hearing officer, in the course of the proceedings, shall include in the written findings a determination of the following: (1) Whether or not the requirements of notice to parents were satisfied; (2) Whether or not the child has a disability; (3) Whether or not the child needs special education and related services; and (4) Whether or not the LEA is supplying a free appropriate public education. g. The hearing officer shall make no presumptions in the case and shall base his findings of fact and decision(s) solely upon the preponderance of the evidence presented at the hearing and applicable state and federal law. h. The hearing officer shall report findings of fact and decision(s) to both parties to the appeal, the LEA, and to the SEA.	*no corresponding section in the amendments*	
i. A decision made by the hearing officer is final, unless a party to the hearing appeals to the state for an administrative review. An appeal by either party must be instituted within 30 administrative working days of the date of the hearing decision.	**SEC. 615. (g) APPEAL** - If the hearing required by subsection (f) is conducted by a local educational agency, any party aggrieved by the findings and decision rendered in such a hearing may appeal such findings and decision to the State educational agency. Such agency shall conduct an impartial review of such decision. The officer conducting such review shall make an independent decision upon completion of such review.	6/4/97
11. Administrative Appeal and Impartial Review a. If there is an appeal of the decision of a hearing officer, the SEA shall ensure an impartial review of the hearing. The review shall be conducted by a reviewing officer appointed according to the Hearing Officer System Rules of Administration Promulgated by the Supreme Court of Virginia. The SEA shall ensure the appointment within two administrative days of the receipt of a request for a review of a due process hearing. The official conducting the review shall: (1) Examine the entire hearing record; (2) Ensure that the procedures at the hearing were consistent with the requirements of due process;	**SEC. 615. (i) ADMINISTRATIVE PROCEDURES -** **(1) IN GENERAL -** **(A) DECISION MADE IN HEARING** - A decision made in a hearing conducted pursuant to subsection (f) or (k) shall be final, except that any party involved in such hearing may appeal such decision under the provisions of subsection (g) and paragraph (2) of this subsection. **(B) DECISION MADE AT APPEAL**- A decision made under subsection (g) shall be final, except that any party may bring an action under paragraph (2) of this subsection.	6/4/97

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(3) Seek additional evidence, if necessary. If a hearing is held to receive additional evidence, then all hearing rights as specified in this section apply; (4) Afford the parties an opportunity for oral or written argument, or both, at the discretion of the reviewing official; (5) Advise all parties of their right to continue to be represented by counsel whether or not the reviewing official determines that a further hearing is necessary; (6) Make an independent decision upon completion of the review; and (7) Give a copy of written findings and the decision(s) to the parties to the appeal, the LEA and to the SEA in the manner prescribed.		
b. The decision made by the reviewing official is final and binding on all parties, unless any party aggrieved by the findings and decisions of the administrative review brings civil action in any state court of competent jurisdiction within one year or in federal district court. In any such action, the court shall receive the records of the administrative proceedings, shall hear additional evidence in its discretion at the request of either party, and basing its decision on the preponderance of the evidence, shall grant such relief as it determines to be appropriate.	**SEC. 615. (i) (2) RIGHT TO BRING CIVIL ACTION -** **(A) IN GENERAL**- Any party aggrieved by the findings and decision made under subsection (f) or (k) who does not have the right to an appeal under subsection (g), and any party aggrieved by the findings and decision under this subsection, shall have the right to bring a civil action with respect to the complaint presented pursuant to this section, which action may be brought in any State court of competent jurisdiction or in a district court of the United States without regard to the amount in controversy. **(B) ADDITIONAL REQUIREMENTS** - In any action brought under this paragraph, the court-- (i) shall receive the records of the administrative proceedings; (ii) shall hear additional evidence at the request of a party; and (iii) basing its decision on the preponderance of the evidence, shall grant such relief as the court determines is appropriate.	6/4/97

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12. Attorney's Fees a. In any such action or proceeding, the court in its discretion, may award reasonable attorney's fees as part of the costs to the parents or guardian of a child with a disability who is the prevailing party. b. If a written offer of settlement is made to a parent or guardian within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure, or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins, and the offer is not accepted within 10 days and the court or administrative officer finds that the relief finally obtained by the parents or guardian is not more favorable to the parent or guardian than the offer of settlement, no award of attorney's fees and related costs may be made for services performed subsequent to the time of such offer, unless the court finds that the prevailing party was reasonably justified in rejecting the settlement offer.	**SEC. 615. (i) (3) JURISDICTION OF DISTRICT COURTS; ATTORNEYS' FEES -** **(A)** **IN GENERAL** - The district courts of the United States shall have jurisdiction of actions brought under this section without regard to the amount in controversy. (B) **AWARD OF ATTORNEYS' FEES**- In any action or proceeding brought under this section, the court, in its discretion, may award reasonable attorneys' fees as part of the costs to the parents of a child with a disability who is the prevailing party. (C) **DETERMINATION OF AMOUNT OF ATTORNEYS' FEES** - Fees awarded under this paragraph shall be based on rates prevailing in the community in which the action or proceeding arose for the kind and quality of services furnished. No bonus or multiplier may be used in calculating the fees awarded under this subsection. **(D)** **PROHIBITION OF ATTORNEYS' FEES AND RELATED COSTS FOR CERTAIN SERVICES -** (i) Attorneys' fees may not be awarded and related costs may not be reimbursed in any action or proceeding under this section for services performed subsequent to the time of a written offer of settlement to a parent if-- (I) the offer is made within the time prescribed by Rule 68 of the Federal Rules of Civil Procedure or, in the case of an administrative proceeding, at any time more than 10 days before the proceeding begins; (II) the offer is not accepted within 10 days; and (III) the court or administrative hearing officer finds that the relief finally obtained by the parents is not more favorable to the parents than the offer of settlement.	6/4/97

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	(ii) Attorneys' fees may not be awarded relating to any meeting of the IEP Team unless such meeting is convened as a result of an administrative proceeding or judicial action, or, at the discretion of the State, for a mediation described in subsection (e) that is conducted prior to the filing of a complaint under subsection (b)(6) or (k) of this section. **(E) EXCEPTION TO PROHIBITION ON ATTORNEYS' FEES AND RELATED COSTS** - Notwithstanding subparagraph (D), an award of attorneys' fees and related costs may be made to a parent who is the prevailing party and who was substantially justified in rejecting the settlement offer.	6/4/97
not addressed in current state regulations	**(F) REDUCTION IN AMOUNT OF ATTORNEYS' FEES** - Except as provided in subparagraph (G), whenever the court finds that-- (i) the parent, during the course of the action or proceeding, unreasonably protracted the final resolution of the controversy; (ii) the amount of the attorneys' fees otherwise authorized to be awarded unreasonably exceeds the hourly rate prevailing in the community for similar services by attorneys of reasonably comparable skill, reputation, and experience; (iii) the time spent and legal services furnished were excessive considering the nature of the action or proceeding; or (iv) the attorney representing the parent did not provide to the school district the appropriate information in the due process complaint in accordance with subsection (b)(7), the court shall reduce, accordingly, the amount of the attorneys' fees awarded under this section. **(G) EXCEPTION TO REDUCTION IN AMOUNT OF ATTORNEYS' FEES** - The provisions of subparagraph (F) shall not apply in any action or proceeding if the court finds that the State or local educational agency unreasonably protracted the final resolution of the action or proceeding or there was a violation of this section.	6/4/97

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13. Timelines for Hearings and Reviews a. The LEA shall ensure that not later than 45 calendar days after the receipt of a request for a due process hearing: (1) A final decision is rendered in the hearing, unless otherwise documented by the hearing officer; and (2) A copy of the decision is mailed to the parties and the SEA. b. The SEA shall ensure that no later than 30 calendar days after the receipt of a request for a review: (1) A final decision is rendered in the review, unless otherwise documented by the reviewing officer; and (2) A copy of the decision is mailed to the parties. c. A hearing or reviewing officer may grant specific extensions of time beyond the periods set out in paragraphs a. and b. of this section at the request of either party. This action shall in no way be used to delay or deprive the parties of their rights and should be exercised only when the best interests of the child will be served. Changes in hearing dates or extensions are to be noted in writing which shall be sent to all parties and to the SEA. d. Each hearing and each review involving oral arguments must be conducted at a time and place which is reasonably convenient to the parent and child involved.	*no corresponding section in the amendments*	
14. Costs of Due Process Hearings and State Review a. Costs for a local hearing shall be shared equally by the LEA and the SEA. The costs shared by the SEA shall include expenses of the hearing officer (i.e., time, travel, secretarial, postal and telephone expenses), expenses incurred by order of the hearing or reviewing officer (i.e., independent educational evaluations, deposition or transcript), and expenses for making a record of a hearing (i.e., hearing tapes and/or stenographer).	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
The SEA shall not be liable to the LEA for expenses incurred for witnesses (except where hearing or reviewing officers subpoena witnesses on their own initiative) or for attorney's fees. b. The SEA shall be responsible for all approved costs for state reviews.	*no corresponding section in the amendments*	
15. Implementation Plan a. The LEA shall develop an implementation plan within 45 calendar days of the rendering of a decision or the withdrawal of a hearing or review request. Such plan shall be based upon the decision of the hearing officer, the reviewing officer, or agreement between the parties. The implementation plan must state how and when the decision or agreement will be put into operation. If the decision or agreement affects the child's educational program, the revised IEP shall be made a part of the implementation plan. The implementation plan shall include the name and position of a case manager in the LEA charged with implementing the decision. Copies of this plan shall be forwarded to the parties to the hearing, the hearing and/or reviewing officer, and the SEA. b. Failure of either of the parties to comply with the implementation plan shall be reported to the SEA for investigation and/or appropriate action.	*no corresponding section in the amendments*	
16. Due Process File The LEA shall maintain a file containing the following: a. A copy of the hearing and reviewing officer's findings of fact and decision; b. A copy of the implementation plan; c. A copy of the electronic or verbatim transcript of the hearing proceedings; and d. A copy of all documents and exhibits presented at the due process hearing and state level review.	*no corresponding section in the amendments*	

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B Confidentiality of Information The Confidentiality of Information shall be as set forth in the Management of the Student's Scholastic Record	**SEC.617 (c) CONFIDENTIALITY** - The Secretary shall take appropriate action, in accordance with the provisions of section 444 of the General Education Provisions Act (20 U.S.C. 1232g), to assure the protection of the confidentiality of any personally identifiable data, information, and records collected or maintained by the Secretary and by State and local educational agencies pursuant the provisions of this part	10/1/97
C Complaint Procedure Complaints regarding violations of rights of parents and/or children with disabilities shall be addressed to the Superintendent of Public Instruction or designee, with the additional requirements as follows: 1 The complaint must be in writing, signed by the organization or individual filing the complaint, and contain a statement that an LEA has violated the Individuals with Disabilities Education Act (IDEA) and/or these regulations. 2 The complaint must contain a statement of facts on which the complaint is based. In addition, all relevant documents shall be forwarded to the Superintendent of Public Instruction or designee. 3 Upon receipt of a complaint, the Superintendent of Public Instruction or designee shall initiate an investigation to determine whether or not the LEA against whom such complaint has been filed is in compliance with applicable law and regulations. 4 Within seven administrative days of the receipt of a written, signed complaint, the Superintendent of Public Instruction or designee shall send notification in writing to each complainant and LEA against which the violation has been alleged, acknowledging receipt of a complaint with copies to other appropriate SEA personnel. The notification sent to the complainant shall provide the complainant with an opportunity to submit additional information, either orally or in writing, about the allegations in the complaint. The notification sent by the SEA complaint officer to the LEA shall include:	*no corresponding section in the amendments*	

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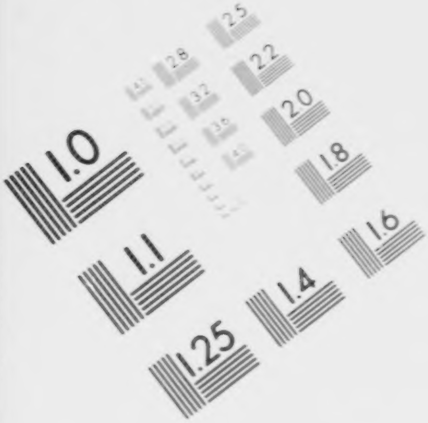

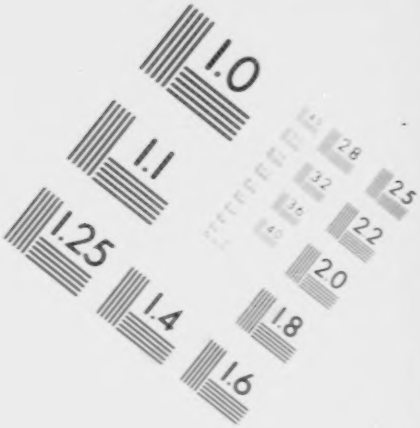

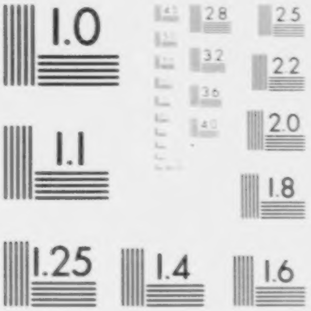

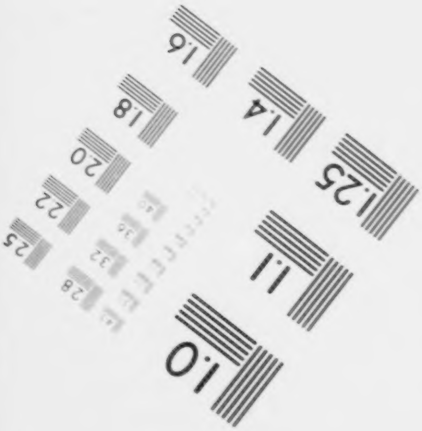

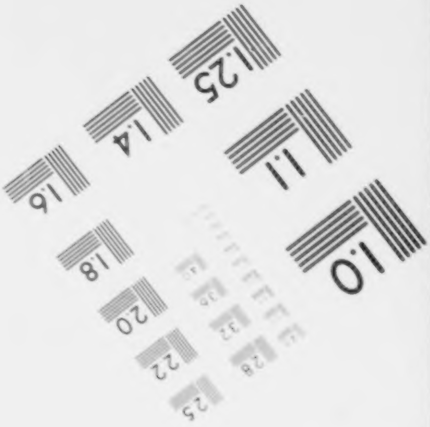

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VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
a. A copy of the complaint; b. An offer of technical assistance in resolving the complaint; and c. Request for written response to the complaint within 10 administrative days of the receipt of the letter of notification. 5. If a reply from the LEA is not filed with the Superintendent of Public Instruction or designee within 10 administrative days of the receipt of the notice, then the Superintendent of Public Instruction or designee shall send a second notice to the LEA advising that failure to respond within seven administrative days of the date of such notice will result in review by the Superintendent of Public Instruction for action regarding appropriate sanctions. 6. The Superintendent of Public Instruction or designee shall take action with respect to the response as follows: a. Review the complaint and reply filed by the LEA to determine if further investigation or corrective action needs to be taken. If no further investigation or action is necessary, then the Superintendent of Public Instruction or designee shall notify both parties, in writing, stating the grounds for such finding. b. Conduct an investigation of the complaint which shall include a complete review of all relevant documentation and may include an independent on-site investigation, if necessary. c. Consider all facts and issues presented and the applicable requirements specified in law, regulations, or standards. d. Make a determination of compliance or non-compliance based upon the facts and applicable law and notify the parties, in writing, of the findings and the basis for such findings. A time limit of 60 calendar days shall be allowed, after the written complaint is received, to carry out the investigation and to resolve the complaint.	*no corresponding section in the amendments*	

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An extension of the 60 calendar days time limit may occur if exceptional circumstances exist with respect to a particular complaint. Both parties to the complaint will be notified in writing by the Superintendent of Public Instruction or designee whenever exceptional circumstances exist and specify the extended time limit. e. Report findings of non-compliance and corresponding recommendations to the party designated by the Superintendent of Public Instruction for review, or where appropriate, directly to the Superintendent of Public Instruction for further action. 7. The Superintendent of Public Instruction or designee will notify the parties in writing of any needed corrective actions and the specific steps which must be taken by the LEA to bring it into compliance. The LEA will be given 15 administrative days from the date of notice of non-compliance to respond and initiate corrective action. 8. Where the LEA develops a plan of action to correct the violations, such plan shall include timelines to correct violations not to exceed 30 administrative days. The plan of action will also include a description of all changes contemplated and shall be subject to approval of the SEA. 9. If the LEA does not come into compliance within the period of time set forth in the notification, then the matter will be referred by the Superintendent of Public Instruction to the Board of Education for a hearing. 10. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing by the Board of Education, finds that the LEA has failed to comply with applicable laws and regulations, and determines that compliance cannot be secured by voluntary means, then he shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that LEA until there is no longer any failure to comply with the applicable law and/or regulation. 11. Parties to the complaint procedure shall have the right to request the United States Secretary of Education to review the final decision.	*no corresponding section in the amendments*	

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§3.5 Requirements for Establishing Surrogate Parent Procedures for LEAs and Applicable State Agencies and Institutions A. Role of Surrogate Parent The surrogate parent requirement in both state and federal laws and regulations is intended to ensure appropriate decision making in educational matters. The surrogate parent is an advocate acting to serve the best educational interests of a child who is suspected of having, or is determined to have, a disability. State and federal regulations require that the surrogate parent represent the child in all matters relating to 1. The identification, evaluation, or educational placement of the child; or 2. The provision of a free appropriate public education to the child. B. Appointment of Surrogate Parents 1. Children (ages two to 21, inclusive) who are suspected of being or determined to have disabilities, whose natural parent(s) or guardian(s) have allowed relatives or private individuals to act as parents to the child, do not require a surrogate parent. A surrogate parent shall be appointed for a child, ages two to 21, inclusive, who is suspected of having or determined to have a disability when: a. No parent or person who has been allowed to act as a parent by the natural parent(s) or guardian(s) can be identified; b. The LEA, after reasonable efforts, cannot discover the location of a parent; or c. The child is a ward of the state. 2. Each LEA shall establish procedures for identifying children in its jurisdiction who are in need of surrogate parents according to the definition. 3. Each LEA shall establish procedures for assigning a surrogate parent to an eligible child. The surrogate parent shall be appointed by the LEA superintendent or designee. a. The appointment having been effected, the LEA shall notify in writing:	**SEC. 615. PROCEDURAL SAFEGUARDS** **(a) ESTABLISHMENT OF PROCEDURES** - Any State educational agency, State agency, or local educational agency that receives assistance under this part shall establish and maintain procedures in accordance with this section to ensure that children with disabilities and their parents are guaranteed procedural safeguards with respect to the provision of free appropriate public education by such agencies. **(b) TYPES OF PROCEDURES** - The procedures required by this section shall include- (1) an opportunity for the parents of a child with a disability to examine all records relating to such child and to participate in meetings with respect to the identification, evaluation, and educational placement of the child, and the provision of a free appropriate public education to such child, and to obtain an independent educational evaluation of the child; (2) procedures to protect the rights of the child whenever the parents of the child are not known, the agency cannot, after reasonable efforts, locate the parents, or the child is a ward of the State, including the assignment of an individual (who shall not be an employee of the State educational agency, the local educational agency, or any other agency that is involved in the education or care of the child) to act as a surrogate for the parents;	6/4/97

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(1) The child with a disability (ages two to 21, inclusive), as appropriate to the disability; (2) The surrogate parent-appointee; (3) The person charged with responsibility for the child; (4) The public agency charged with responsibility for the child when the child is a ward of the State; (5) The SEA. b. LEAs are required to send parents' copy of notice to child's guardian and/or custodial state agency. In instances where the LEA has not been able to locate the present whereabouts of the parent(s), a letter to the parents' last known address is evidence of the LEA's good faith effort to effect this requirement. c. The surrogate parent shall serve during, or for the duration of, the school year for which he is appointed.; (1) When it has been determined that the child requires a differentiated instructional program as delineated in the IEP, the surrogate parent shall be appointed to serve for the duration of that current document. (2) Should a child require the services of a surrogate parent during the summer months, the LEA shall extend the appointment as needed, consistent with timelines required by law. d. At the conclusion of each school year, appointment of surrogate parents shall be renewed or not renewed following a review by the LEA.		

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4. Each LEA shall establish procedures which include conditions and methods for changing or terminating the assignment of a surrogate parent before his appointment has expired. Established procedures shall provide the right to request a hearing to challenge the qualifications or termination if the latter occurs prior to the end of the term of appointment. The assignment of a surrogate parent may be terminated only when one or more of the circumstances occur as follows: a. The child reaches the age of majority (except those persons who are of the age of majority but who are determined to be legally dependent and subject to a guardianship); b. The child is found no longer eligible for special education services (except when termination of special education services is being contested); c. Legal guardianship responsible for the child is transferred to a person who is able to carry out the role of the parent; d. A parent, who was previously unknown or unavailable, is now known or available; or e. The appointed surrogate parent is no longer eligible (see "Qualifications for Surrogate Parent"). C. Identification and Recruitment of Surrogate Parents 1. The LEA shall develop and maintain a list of individuals within its jurisdiction who are qualified to serve as surrogate parents. It may be necessary for LEAs to go beyond jurisdictional limits in generating a list of potentially qualified surrogate parents. It should be noted, however, that geographic proximity is essential to the relationship between the child with a disability and the surrogate parent.		

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2. Individuals who are not on the LEA list may be eligible to serve as surrogate parents, subject to the LEA's discretion. In such situations, the needs of the individual child and the availability of qualified persons who are familiar with the child and who would otherwise qualify shall be considerations in the LEA's determination of surrogate eligibility. Other factors which warrant the LEA's attention are as follows: a. Consideration of the appointment of a relative to serve as surrogate parent; b. Consideration of the appointment of a foster parent who has the knowledge and skills to represent the child adequately; c. Consideration of the appointment of a qualified person of the same racial, cultural, and linguistic background as the child who is suspected of having or has been identified as having a disability; and d. The appropriateness of the child's participation in the selection of his surrogate parent. D. Qualifications of Surrogate Parents Each LEA shall ensure that a person appointed a surrogate: 1. Has no interest that conflicts with the interest of the child he represents; 2. Has knowledge and skills that ensure adequate representation of the child. The prospective surrogate parent must have completed an SEA approved training session prior to representing the child. The LEA shall provide training, at least annually, for surrogate parents to ensure that they possess knowledge of special education and related services for children with disabilities, as well as knowledge of the legal requirements necessary to represent the children effectively. 3. Is not an employee of a public agency which is involved in the education or care of the child; 4. Is an adult and legal citizen of the United States; and		

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5. Resides in the same general geographic area as the child, whenever possible. A person who otherwise qualifies to be a surrogate parent is not an employee of the agency solely because he is paid by the agency to serve as a surrogate parent. E. Rights of Surrogate Parents The surrogate parent, when representing the child's educational interest, has the same rights as those accorded to parents of children determined or suspected to have disabilities.		
§3.6 **Administration and Governance**	**SEC. 613. (a)(6) INFORMATION FOR STATE EDUCATIONAL AGENCY** - The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (16) and (17) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.	6/4/97
A. Plans, Applications and Reports 1. Each LEA is required to prepare and submit to the appropriate state authority the following: a. To the SEA, by such date as the Board may specify, acceptable Annual Special Education Plan/Report and Funding Applications that: (1) Specifies plans for providing a free appropriate education and related services to all children with disabilities for the following year; and (2) Reports on the extent to which the plan for the preceding year has been implemented. b. To the SEA, an application for funding under Part B of Public Law 94-142 as amended or Public Law 89-313 as amended, containing assurances of compliance in accordance with various procedures outlined by the SEA.	**SEC. 613. (b) EXCEPTION FOR PRIOR LOCAL PLANS -** **(1)** **IN GENERAL** - If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part. **(2)** **MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY** - Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until it submits to the State educational agency such modifications as the local educational agency deems necessary.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
2. Each LEA shall include the following provisions and assurances in the Annual Special Education Plan/Report and Funding Applications: a. A free appropriate public education will be available for each child with a disability, ages two to 21, inclusive. b. All children, ages two to 21, inclusive, residing in the LEA who have disabilities and need special education and related services are identified, located, evaluated, and placed in an appropriate educational program. c. Children with disabilities and their parents or guardians are guaranteed procedural safeguards in the process of identification, evaluation, or educational placement, or the provision of a free appropriate public education. d. To the maximum extent appropriate, children with disabilities will be educated with children who are nondisabled.. e. Confidential records of children with disabilities shall be properly maintained. f. Testing and evaluative materials used for the purpose of classifying and placing children with disabilities are selected and administered so as not to be racially or culturally discriminatory. g. An individualized education program will be maintained for each child with a disability h. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the needs of children with disabilities is provided. i. There will be on-going parent consultation. j. A full educational opportunity goal is provided for all children with disabilities, from birth to age 21, inclusive, including appropriate career education, pre-vocational education, and vocational education.	**SEC. 613. (b) (3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY** - If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
k. Children with disabilities must be given the right of participating in the Literacy Testing Program (LTP) program.		
3. Each LEA shall also ensure that all required special education plans, applications, reports, and program evaluations are available for public inspection.	**SEC. 613. (a)(7) PUBLIC INFORMATION**- The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.	6/4/97
B. Personnel Development Each LEA shall establish a program and procedures for the development and implementation of a comprehensive system of personnel development which shall include: 1. In-service training for all general and special education instructional, related services, and support personnel, and 2. Procedures to ensure that all personnel who are responsible for the instructional programs or delivery of related or support services to children with disabilities are properly certified and endorsed.	**SEC. 612. (a)(14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT**- The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653. **SEC. 612. (a)(15) PERSONNEL STANDARDS** - **(A) IN GENERAL**- The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained. **(B) STANDARDS DESCRIBED**- Such standards shall-- `(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; (i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;	7/1/97 6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
	(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and (iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part. (C) **POLICY** - In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the state make an ongoing good-faith effort to recruit and hire appropriatly and adequately trained personnel to provide special education and related services to cihildren with disabilities, including, in a geographic area of the state where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with state law, and the steps described in subparagraph (B)(ii) within three years.	6/4/97
C. Local Advisory Committee There shall be a local advisory committee for special education appointed by each local school board to advise the school board through the division superintendent. The composition of the committee shall include parents of children with disabilities. 1. Local school division personnel shall serve only as consultants to the committee. 2. The functions of the local advisory committee shall be as follows:	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
a. Advise the local school division of unmet needs in the education of children with disabilities; b. Assist the local school division in the formulation and development of long-range plans designed to provide needed educational services for children with disabilities; c. Participate in the development of priorities and strategies for meeting the identified needs of children with disabilities; d. Submit periodic reports and recommendations regarding the education of children with disabilities to the division superintendent for transmission to the local school board; and e. Assist the local school division in interpreting plans to the community for meeting the special needs of children with disabilities for educational services. 3. Public notice shall be published annually listing the names of committee members and including a description of ways in which interested parties may express their views to the committee. 4. Committee meetings shall be held at least quarterly and shall be open to the public. 5. One meeting shall be designated specifically for the review of the Annual Special Education Plan/Report and Funding Applications prior to submission to the local school board.	*no corresponding section in the amendments*	
D. Regional Programs 1. Where it becomes necessary for local school divisions to develop regional or cooperative programs to serve their children with disabilities, such regional programs shall be provided in accordance with least restrictive environment requirements.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
2. Where LEAs elect to participate in an approved regional program for the provision of special education and related services for certain children with disabilities, a Joint Board shall be established to manage and control the jointly owned or operated program, center or school. Establishment of the Joint Board, and administration of the jointly operated program shall be conducted in accordance with the Board of Education regulations governing such programs. 3. The Annual Special Education Plan/Report and Funding Applications of each LEA participating in a regional program shall contain a description of its program, activities and supervisory involvement as prescribed by the SEA. Each Joint Board may submit a composite Annual Special Education Plan/Report and Funding Applications which is composed of excerpts from each of the participating LEAs. 4. Each Joint Board shall appoint a qualified director who shall be the administrative head of the cooperative unit. The director shall be responsible for the administration of programs and services which are approved by the governing body.	*no corresponding section in the amendments*	
not addressed in current state regulations	**SEC. 611. (d)(2) INTERIM FORMULA**- Except as provided in subsection (e), the Secretary shall allocate the amount described in paragraph (1) among the States in accordance with section 611(a)(3), (4), and (5) and (b)(1), (2), and (3) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997, except that the determination of the number of children with disabilities receiving special education and related services under such section 611(a)(3) may, at the State's discretion, be calculated as of the last Friday in October or as of December 1 of the fiscal year for which the funds are appropriated.	Federal FY 1998 *{funds appropriated}*

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 612. (a)(16) PERFORMANCE GOALS AND INDICATORS** - The State-- (A) has established goals for the performance of children with disabilities in the State that-- (i) will promote the purposes of this Act, as stated in section 601(d); and (ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State; (B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates; (C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and (D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.	7/1/98
not addressed in current state regulations	**SEC. 611. (f)(5) REPORT ON USE OF FUNDS** - As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe-- (A) how amounts retained under paragraph (1) will be used to meet the requirements of this part; (B) how those amounts will be allocated among the activities described in paragraphs (2) and (3) to meet State priorities based on input from local educational agencies; and (C) the percentage of those amounts, if any, that will be distributed to local educational agencies by formula.	Federal FY 1998 *{funds appropriated}*

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 612. (a)(17) PARTICIPATION IN ASSESSMENTS -** (A) **IN GENERAL** - Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency-- (i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and (ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments. (B) **REPORTS**- The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following: (i) The number of children with disabilities participating in regular assessments. (ii) The number of those children participating in alternate assessments. (iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children. (II) Data relating to the performance of children described under subclause (I) shall be disaggregated-- (aa) for assessments conducted after July 1, 1998; and (bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 612. (a)(22) SUSPENSION AND EXPULSION RATES-** **(A)** **IN GENERAL-** The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities-- (i) among local educational agencies in the State; or (ii) compared to such rates for nondisabled children within such agencies. **(B)** **REVIEW AND REVISION OF POLICIES** - If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act	6/4/97
not addressed in current state regulations	**SEC. 613. (a)(6) INFORMATION FOR STATE EDUCATIONAL AGENCY-** The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (16) and (17) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 613. (g) SCHOOL-BASED IMPROVEMENT PLAN -** **(1) IN GENERAL** - Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school. **(2) AUTHORITY-** (A) **IN GENERAL** - A State educational agency may grant authority to a local educational agency to permit a public school described in paragraph (1) (through a school-based standing panel established under paragraph (4)(B)) to design, implement, and evaluate a school-based improvement plan described in paragraph (1) for a period not to exceed 3 years. (B) **RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY-** If a State educational agency grants the authority described in subparagraph (A), a local educational agency that is granted such authority shall have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this subsection. (3) **PLAN REQUIREMENTS-** A school-based improvement plan described in paragraph (1) shall-- (A) be designed to be consistent with the purposes described in section 651(b) and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4), who attend the school for which the plan is designed and implemented;	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	(B) be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with paragraph (4)(B); (C) include goals and measurable indicators to assess the progress of the public school in meeting such goals; and (D) ensure that all children with disabilities receive the services described in the individualized education programs of such children. (4) **RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY** - A local educational agency that is granted authority under paragraph (2) to permit a public school to design, implement, and evaluate a school-based improvement plan shall-- (A) select each school under the jurisdiction of such agency that is eligible to design, implement, and evaluate such a plan; (B) require each school selected under subparagraph (A), in accordance with criteria established by such local educational agency under subparagraph (C), to establish a school-based standing panel to carry out the duties described in paragraph (3)(B); (C) establish-- (i) criteria that shall be used by such local educational agency in the selection of an eligible school under subparagraph (A); (ii) criteria that shall be used by a public school selected under subparagraph (A) in the establishment of a school-based standing panel to carry out the duties described in paragraph (3)(B) and that shall ensure that the membership of such panel reflects the diversity of the community in which the public school is located and includes, at a minimum--	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	(I) parents of children with disabilities who attend such public school, including parents of children with disabilities from unserved and underserved populations, as appropriate; (II) special education and general education teachers of such public school; (III) special education and general education administrators, or the designee of such administrators, of such public school; and (IV) related services providers who are responsible for providing services to the children with disabilities who attend such public school; and (iii) criteria that shall be used by such local educational agency with respect to the distribution of funds under this part to carry out this subsection; (D) disseminate the criteria established under subparagraph (C) to local school district personnel and local parent organizations within the jurisdiction of such local educational agency; (E) require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at such time, in such manner, and accompanied by such information as such local educational agency shall reasonably require; and (F) establish procedures for approval by such local educational agency of a school-based improvement plan designed under this subsection.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 613. (g)(5) LIMITATION** - A school-based improvement plan described in paragraph (1) may be submitted to a local educational agency for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of such plan is reached by the school-based standing panel that designed such plan.	6/4/97
not addressed in current state regulations	**SEC. 613. (g)(6) ADDITIONAL REQUIREMENTS** - **(A)** **PARENTAL INVOLVEMENT** - In carrying out the requirements of this subsection, a local educational agency shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, where appropriate, implementation of school-based improvement plans in accordance with this subsection. **(B)** **PLAN APPROVAL** - A local educational agency may approve a school-based improvement plan of a public school within the jurisdiction of such agency for a period of 3 years, if-- (i) the approval is consistent with the policies, procedures, and practices established by such local educational agency and in accordance with this subsection; and (ii) a majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel, that designed such plan agree in writing to such plan.	6/4/97
not addressed in current state regulations	**SEC. 613. (g)(7) EXTENSION OF PLAN** - If a public school within the jurisdiction of a local educational agency meets the applicable requirements and criteria described in paragraphs (3) and (4) at the expiration of the 3-year approval period described in paragraph (6)(B), such agency may approve a school-based improvement plan of such school for an additional 3-year period.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 613. (j) DISCIPLINARY INFORMATION** - The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.	6/4/97
PART IV **Funding** §4.1 **Reimbursement to LEAs and State-Operated Programs** A. State and federal funds administered by the SEA are disbursed to LEAs and state-operated programs in accordance with the following requirements: 1. Compliance with regulations of the Board of Education including those for accreditation; 2. Education programs for children with disabilities shall be operated pursuant to an approved Annual Special Education Plan/Report and Funding Applications;	*no corresponding section in the amendments*	
3. Special education teachers, speech-language pathologists, school psychologists, visiting teachers, school social workers, and supervisors of special education shall meet fully the Board of Education licensure and endorsement requirements for such employment;	**SEC. 612. (a)(15) PERSONNEL STANDARDS -** **(A)** **IN GENERAL-** The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
	(B) **STANDARDS DESCRIBED** - Such standards shall-- (i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services; (ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and (iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part. **(C)** **POLICY**- In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years	6/4/97
4 All disbursement is subject to the availability of funds. In the event of insufficient state funds, disbursement may be prorated pursuant to provisions of the appropriations act.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
§4.2 **State Funds** State funds to assist local school divisions with the cost of providing special education and related services for children with disabilities are provided through the SEA's appropriation as follows: A. Children with disabilities enrolled in programs operated by a local school board: 1. Day school programs In addition to the funds received for each pupil from Basic Aid, LEAs will receive payment to support the state share of the number of special education teachers and aides required by the Standards of Quality. 2. Homebound instruction LEAs shall be reimbursed 60 percent of the hourly payment to teachers employed to provide homebound instruction to eligible children. Such reimbursement shall not exceed 60 percent of an established hourly rate determined annually by the Department, and shall be in addition to Basic Aid. 3 Transportation Children with disabilities, ages two to 21, inclusive, transported on approved school buses or on public transit buses to public schools or approved private schools pursuant to their IEPs are funded in accordance with pupil transportation regulations. B. Children with disabilities enrolled in regional special education programs: 1. Reimbursement is available for a portion of the tuition costs based on the local composite index computed at 60%. Rates will be approved following procedures established by the Board of Education. Regional special education programs operated by a Joint Board, or for LEAs operating a residential program accepting eligible children with disabilities from other local school division(s) who have:	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
a A severe and profound disability b A serious emotional disturbance c Autism d Multiple disabilities e Deafness f A hearing impairment g Deaf-Blindness h A traumatic brain injury 2 Such reimbursement shall be in lieu of the per pupil basic operation cost and other state aid otherwise available for each child. Decisions regarding the determination of reasonable tuition costs and other reasonable charges may be appealed under procedures prescribed in the Rules of the Interdepartmental Committee on Rate-Setting. The Joint Regulations on Rate-Setting for Children's Facilities of the Board of Education, the Board of Social Services and the Board of Corrections.	*no corresponding section in the amendments*	
C Funds under the Comprehensive Services Act for At Risk Youth and Families: 1 Funds are available under the Comprehensive Services Act for At-Risk Youth and Families to support the state's share of costs for children with disabilities whose IEPs call for private day or private residential placement, or other purchased services, under the provisions of the Comprehensive Services Act. 2 When a parent unilaterally places a child with a disability in an approved private nonsectarian school for children with disabilities, the LEA shall not be responsible for the cost of the placement. If a hearing officer or reviewing officer or court determines that such placement, rather than the IEP proposed by the LEA, is appropriate and no appeal is perfected from that decision, the LEA is responsible for placement and funds are available under the Comprehensive Services Act to support the state's share of costs.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
D Reimbursement for children with disabilities placed in foster care shall be made in accordance with procedures established by the SEA.	*no corresponding section in the amendments*	
§4.3 **Federal Funds** A Federal funds are available under Part B of Public Law 94-142, as amended, to assist local school divisions with the excess cost of providing special education and related services for children with disabilities ages two to 21, inclusive. The application for such funds is submitted to the SEA according to applicable federal requirements. B. In order to qualify for Part B funds, an LEA must spend as much in state and local funds on elementary children with disabilities as on elementary nondisabled children; and as much on secondary children with disabilities as on secondary nondisabled children. C. Part B funds may not be used to supplant state and local expenditures for special education and related services.	**SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY.** **(a)** **IN GENERAL** - A local educational agency is eligible for assistance under this part for a fiscal year if such agency demonstrates to the satisfaction of the State educational agency that it meets each of the following conditions: (1) **CONSISTENCY WITH STATE POLICIES** - The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612. (2) **USE OF AMOUNTS** - (A) **IN GENERAL**- Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and-- (i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities; (ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and (iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
	(B) EXCEPTION- Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to-- (i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel; (ii) a decrease in the enrollment of children with disabilities; (iii) the termination of the obligation of agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child-- (I) has left the jurisdiction of the agency; (II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or (III) no longer needs such program of special education; or (iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities. **(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS -** (i) Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which amounts appropriated to carry out section 611 exceeds $4,100,000,000, a local educational agency may treat as local funds, for the purpose of such clauses, up to 20 percent of the amount of funds it receives under this part that exceeds the amount it received under this part for the previous fiscal year.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
	(ii) Notwithstanding clause (i), if a State educational agency determines that a local educational agency is not meeting the requirements of this part, the State educational agency may prohibit the local educational agency from treating funds received under this part as local funds under clause (i) for any fiscal year, only if it is authorized to do so by the State constitution or a State statute. (D) **SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA** - Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed-- (i) the number of children with disabilities participating in the schoolwide program; multiplied by (ii) (I) the amount received by the local educational agency under this part for that fiscal year; divided by (II) the number of children with disabilities in the jurisdiction of that agency. (3) **PERSONNEL DEVELOPMENT**- The local educational agency-- (A) shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 653(c)(3)(D); and (B) to the extent such agency determines appropriate, shall contribute to and use the comprehensive system of personnel development of the State established under section 612(a)(14).	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
	(4) **PERMISSIVE USE OF FUNDS** - Notwithstanding paragraph (2)(A) or section 612(a)(18)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities: (A) **SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN** - For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services. (B) **INTEGRATED AND COORDINATED SERVICES SYSTEM** - To develop and implement a fully integrated and coordinated services system in accordance with subsection (f). (5) **TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS** - In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency-- (A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and (B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.	6/4/97
§4.3 **Federal Funds** D. The entitlement of Part B funds for each LEA is based upon the unduplicated number of children with disabilities certified by the division superintendent as receiving special education and related services on December 1 of the prior year.	**SEC. 611. (g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES -** (1) **SUBGRANTS REQUIRED** - Each State that receives a grant under this section for any fiscal year shall distribute any funds it does not retain under subsection (f) (at least 75 percent of the grant funds) to local educational agencies in the State that have established their eligibility under section 613, and to State agencies that received funds under section 614A(a) of this Act for fiscal year 1997, as then in effect, and have established their eligibility under section 613, for use in accordance with this part.	Federal FY 1998 *{funds appropriated}*

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
	(2) ALLOCATIONS TO LOCAL EDUCATIONAL AGENCIES - **(A) INTERIM PROCEDURE-** For each fiscal year for which funds are allocated to States under subsection (d)(2), each State shall allocate funds under paragraph (1) in accordance with section 611(d) of this Act, as in effect prior to the enactment of the Individuals with Disabilities Education Act Amendments of 1997. **(B) PERMANENT PROCEDURE-** For each fiscal year for which funds are allocated to States under subsection (e), each State shall allocate funds under paragraph (1) as follows: (i) BASE PAYMENTS- The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for the base year, as defined in subsection (e)(2)(A), if the State had distributed 75 percent of its grant for that year under section 611(d), as then in effect. (ii) ALLOCATION OF REMAINING FUNDS- After making allocations under clause (i), the State shall-- (I) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and (II) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency.	Federal FY 1998 *{funds appropriated}*

VA SPED Regulations (1994)		IDEA Amendments 1997	Effective Date
§4.3 E	**Federal Funds** Children with disabilities transferred from State Operated Programs to LEAs may be served with funds applied for in accordance with the provisions of Public Law 89-313, as amended. However, no child included in the count for Public Law 94-142, as amended, is eligible to be counted for funding under Public Law 89-313, as amended.	*{P.L. 89-313 no longer exists, and SOPs are funded under Part B}*	
§4.4 A	**Funds to Assist with the Education of Children with Disabilities Residing in State-Operated Facilities are available as follows:** Children in State Mental Health Facilities State funds for special education and related services for children in state mental health facilities are appropriated to the Department of Education. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental health facility. Such amount shall be transferred by the Department of Education from the local school division's Basic Aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.	*{P.L. 89-313 no longer exists, and SOPs are funded under Part B}*	
B	Children in State Training Centers for the Mentally Retarded State funds for special education and related services for children in state training centers for the mentally retarded are appropriated to the Department of Mental Health, Mental Retardation and Substance Abuse Services. Local funds for such education shall be an amount equal to the required local per pupil expenditure for the period during which a local school division has a child in residence at a state mental retardation facility. Such amount shall be transferred by the Department of Education from the local school division's Basic Aid funds. Federal funds are available under the provisions of Public Law 89-313, as amended.	*{P.L. 89-313 no longer exists, and SOPs are funded under Part B}*	
C	Children in Specialized Children's Hospitals State funds are provided for special education and related services in the special education appropriation. Federal funds are available under the provisions of Public Law 89-313, as amended.	*{P.L. 89-313 no longer exists, and SOPs are funded under Part B}*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
D. Children in Woodrow Wilson Rehabilitation Center State funds for special education and related services are derived from the special education appropriation. Federal funds are available under the provisions of Public Law 89-313, as amended.	*{P.L. 89-313 no longer exists, and SOPs are funded under Part B}*	
E. Children in Regional Juvenile Detention Homes State funds for special education services are available from the special education appropriation. F. State-Operated Diagnostic Clinics State funds for the employment of educational consultants assigned to child development and other specialty clinics operated by the State Department of Health are derived from the special education appropriation. G. Virginia Department of Correctional Education State funds for the education of children, including children with disabilities, are appropriated to the Virginia Department of Correctional Education for the education of all children residing in state operated correctional facilities. Federal funds are available under the provisions of Public Law 94-142, as amended.	*{NOTE: change federal law reference to:* *Public Law 105-17}*	
§4.5 Funding, Withholding, and Recovery of Funds A. The SEA shall disburse funds to LEAs for the education of children with disabilities (ages two to 21, inclusive) when they provide documentation of compliance with state and federal laws and regulations	*no corresponding section in the amendments*	
B. Where documentation of compliance is not submitted or is inadequate, the Superintendent of Public Instruction shall notify the LEA that state and federal funds will not be available for reimbursement for special education programs and services. 1. The notification shall include the substance of the alleged violation, and the LEA shall be given an opportunity to submit a written response; and 2. The LEA shall have the right to appeal to the Board of Education under Section 4.6 of this part.	**SEC. 612.(a)(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY**- The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
C. If the Superintendent of Public Instruction, after reasonable notice and opportunity for a hearing under Section 4.6 of this part, finds that an LEA has failed to comply with the Board of Education regulations and determines that compliance cannot be secured by voluntary means, then the Superintendent shall issue a decision in writing stating that state and federal funds for the education of children with disabilities shall not be made available to that LEA until it complies with the Board of Education regulations. D. Where there is evidence that a child has been erroneously classified and thereby counted as eligible for state and federal special education funds and such evidence is challenged by the LEA, the foregoing due process procedures shall apply. E. Where it is determined that such funds have been erroneously claimed, the SEA shall bill the LEA for the amount of funds improperly received or withhold an equal amount of state or federal funds for the following year.	**SEC. 613. (c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY-** If the State educational agency determines that a local educational agency or State agency is not eligible under this section, the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing. **SEC. 613. (d) LOCAL EDUCATIONAL AGENCY COMPLIANCE-** (1) **IN GENERAL** - If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement. (2) **ADDITIONAL REQUIREMENT** - Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency. (3) **CONSIDERATION** - In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
§4.6 **Appeal of Administrative Decision** A. The SEA recommendation to disapprove an LEA Annual Special Education Plan/Report and Funding Applications or to withhold special education funds may be appealed by an LEA. B. The procedures for the appeal of administrative decisions are as follows: 1. The LEA must request, in writing, a hearing by the SEA within 30 administrative working days from the receipt of notification from the Superintendent of Public Instruction. 2. Within 10 administrative working days from the date of request for a hearing, the Superintendent of Public Instruction shall notify the LEA in writing of the date, time and location of the hearing; 3. The hearing shall transpire within 15 administrative working days from the date of notification; 4. The hearing board shall be composed of the following persons: a. Two persons from the SEA who were not participants in the contested decision; these persons shall be appointed by the Superintendent of Public Instruction; and b. Two members of the State Special Education Advisory Committee to be appointed by the chairman of the committee; 5. Witnesses and attorneys may be present and testify for the SEA or the LEA; 6. A written or electronic verbatim record shall be kept of all proceedings of the hearing; 7. The hearing board shall review all pertinent evidence presented and shall make a written recommendation to the Board of Education which will render a decision; and 8. The decision made by the Board of Education is final, unless a party appeals to a state court of competent jurisdiction or federal district court.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 611. (f)(4)(A) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES FOR CAPACITY-BUILDING AND IMPROVEMENT** - In any fiscal year in which the percentage increase in the State's allocation under this section exceeds the rate of inflation (as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor), each State shall reserve, from its allocation under this section, the amount described in subparagraph (B) to make subgrants to local educational agencies, unless that amount is less than $100,000, to assist them in providing direct services and in making systemic change to improve results for children with disabilities through one or more of the following: (i) Direct services, including alternative programming for children who have been expelled from school, and services for children in correctional facilities, children enrolled in State-operated or State-supported schools, and children in charter schools. (ii) Addressing needs or carrying out improvement strategies identified in the State's Improvement Plan under subpart 1 of part D. (iii) Adopting promising practices, materials, and technology, based on knowledge derived from education research and other sources. (iv) Establishing, expanding, or implementing interagency agreements and arrangements between local educational agencies and other agencies or organizations concerning the provision of services to children with disabilities and their families. (v) Increasing cooperative problem-solving between parents and school personnel and promoting the use of alternative dispute resolution.	Federal FY 1998 *{funds appropriated}*

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VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	**SEC. 611. (f)(4)(B) MAXIMUM SUBGRANT**- For each fiscal year, the amount referred to in subparagraph (A) is-- (i) the maximum amount the State was allowed to retain under paragraph (1)(A) for the prior fiscal year, or for fiscal year 1998, 25 percent of the State's allocation for fiscal year 1997 under this section; multiplied by (ii) the difference between the percentage increase in the State's allocation under this section and the rate of inflation, as measured by the percentage increase, if any, from the preceding fiscal year in the Consumer Price Index For All Urban Consumers, published by the Bureau of Labor Statistics of the Department of Labor.	Federal FY 1998 *(funds appropriated)*
not addressed in current state regulations	**SEC. 611. (f)(5) REPORT ON USE OF FUNDS** - As part of the information required to be submitted to the Secretary under section 612, each State shall annually describe-- (A) how amounts retained under paragraph (1) will be used to meet the requirements of this part; (B) how those amounts will be allocated among the activities described in paragraphs (2) and (3) to meet State priorities based on input from local educational agencies; and (C) the percentage of those amounts, if any, that will be distributed to local educational agencies by formula.	Federal FY 1998 *(funds appropriated)*
not addressed in current state regulations	**SEC. 619. (g) SUBGRANTS TO LOCAL EDUCATIONAL AGENCIES**- **(1) SUBGRANTS REQUIRED** - Each State that receives a grant under this section for any fiscal year shall distribute any of the grant funds that it does not reserve under subsection (d) to local educational agencies in the State that have established their eligibility under section 613, as follows:	Federal FY 1998 *(funds appropriated)*

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
not addressed in current state regulations	(A) **BASE PAYMENTS** - The State shall first award each agency described in paragraph (1) the amount that agency would have received under this section for fiscal year 1997 if the State had distributed 75 percent of its grant for that year under section 619(c)(3), as then in effect. (B) **ALLOCATION OF REMAINING FUNDS**- After making allocations under subparagraph (A), the State shall-- (i) allocate 85 percent of any remaining funds to those agencies on the basis of the relative numbers of children enrolled in public and private elementary and secondary schools within the agency's jurisdiction; and (ii) allocate 15 percent of those remaining funds to those agencies in accordance with their relative numbers of children living in poverty, as determined by the State educational agency. (2) **REALLOCATION OF FUNDS** - If a State educational agency determines that a local educational agency is adequately providing a free appropriate public education to all children with disabilities aged 3 through 5 residing in the area served by that agency with State and local funds, the State educational agency may reallocate any portion of the funds under this section that are not needed by that local agency to provide a free appropriate public education to other local educational agencies in the State that are not adequately providing special education and related services to all children with disabilities aged 3 through 5 residing in the areas they serve.	Federal FY 1998 *{funds appropriated}*

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
Part V. **Additional Responsibilities of State Boards, Agencies and Institutions for Education and Training of Children with Disabilities in Residence or Custody** §5.1 **Provision of Special Education to Children with Disabilities in Residence or Custody** Each State Board, Agency, and Institution having children with disabilities in residence or custody shall provide education pursuant to standards, policies and procedures established by the Board of Education. The procedures outlined in Part III, Responsibilities of LEAs and State Agencies, of these regulations are applicable to each State Board, Agency and Institution having children with disabilities in residence and custody.	**SEC. 612. (a)(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION-** **(A)** **IN GENERAL-** The State educational agency is responsible for ensuring that-- (i) the requirements of this part are met; and (ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency-- (I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and (II) meet the educational standards of the State educational agency. **(B)** **LIMITATION-** Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State. **(C)** **EXCEPTION-** Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any publicc agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.	6/4/97
§5.2 **Annual Plan** Each State Board, Agency, and Institution having responsibility for providing such education and training shall submit annually to the SEA for approval by the Board of Education its program plan for the education and training for children with disabilities in residence or custody. This program plan, to be submitted by the date and in the manner specified by the Board of Education, shall include the provisions and assurances as specified in Section 3.6 of these regulations.	**SEC. 613. (i) STATE AGENCY ELIGIBILITY-** Any State agency that desires to receive a subgrant for any fiscal year under section 611(g) shall demonstrate to the satisfaction of the State educational agency that-- (1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and (2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
In addition, the program plan shall include the following: A. The educational objectives of the State Board, Agency, or Institution; B. Strategies for achieving the educational objectives, including an organized program for staff development; C. A system of communication between educational and other personnel, including treatment and residential care staff, to ensure coordination of program objective(s); D. A system of communication to assure service continuity in the transition of the student into and out of the educational program of the facility;	**SEC. 614. (d) (6) CHILDREN WITH DISABILITIES IN ADULT PRISONS-** (A) **IN GENERAL** - The following requirements do not apply to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons: (i) The requirements contained in section 612(a)(17) and paragraph (1)(A)(v) of this subsection (relating to participation of children with disabilities in general assessments). (ii) The requirements of subclauses (I) and (II) of paragraph (1)(A)(vii) of this subsection (relating to transition planning and transition services), do not apply with respect to such children whose eligibility under this part will end, because of their age, before they will be released from prison. (B) **ADDITIONAL REQUIREMENT**- If a child with a disability is convicted as an adult under State law and incarcerated in an adult prison, the child's IEP Team may modify the child's IEP or placement notwithstanding the requirements of sections 612(a)(5)(A) and 614(d)(1)(A) if the State has demonstrated a bona fide security or compelling penological interest that cannot otherwise be accommodated.	6/4/97

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
E. An assessment plan for determining the extent to which the objectives have been achieved including, where practicable, follow-up studies of former students to assist in annual program evaluation	**SEC. 613. (b) EXCEPTION FOR PRIOR LOCAL PLANS -** (1) **IN GENERAL** - If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.	6/4/97
F. A system of communication between the State Board, Agency, or Institution and its employees, whereby the views of all educational employees may be received in an orderly and constructive manner in matters of concern to them; G. A cooperatively developed procedure for the evaluation of educational personnel; H. The grievance procedures regarding educational personnel as prescribed by the State or the appropriate local agency or board;	*no corresponding section in the amendments*	
I. A comprehensive system of personnel development to include the in-service training of general and special education instructional and support personnel related to the educational needs of children in residence is provided	**SEC. 612. (a)(14)COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT**- The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.	7/1/98

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
J. At least 5-1/2 hours of education/training per school day or 27-1/2 hours per school week is available for each student to implement his IEP. A waiver statement is on file for each student whose medical or physical condition requires modification of the school schedule. This waiver statement shall document the physical or mental condition of the individual student which requires significant modification of this schedule, and there shall be on file statements of concurrence by the principal, supervisor or educational director and other personnel as follows: 1. Department of Mental Health, Mental Retardation and Substance Abuse Facilities - attending physician; 2. Department of Correctional Education - treatment team; 3. School for the Deaf and the Blind - physician, staffing committee and principal; 4. Woodrow Wilson Rehabilitation Center - Center counselor upon recommendation of the staffing committee; 5. State medical facilities - attending physician(s); 6. Juvenile detention homes - detention superintendent or designee; K. Each state school for the deaf and the blind shall provide a planned dormitory and a student-life program for each age group of children, including social and daily living skills, recreation, and cultural activities.	*no corresponding section in the amendments*	
§5.3 **Staff and Facility** A. Each State Board, Agency or Institution shall assign personnel to the educational program as follows: 1. Administrative, supervisory, instructional, support and ancillary personnel holding valid professional licenses, certificates and endorsements as appropriate in the area of assignment (national standards may apply in the absence of state licensure or certification requirements). 2. Additional education personnel to provide required related services as delineated in the IEP. 3. Teacher aides must be high school graduates or equivalent.	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
B Each State Board, Agency or Institution shall staff the educational program as follows: 1. A principal, supervisor, education director or lead teacher for the educational program provided at each school or institution except for juvenile detention homes. 2. Instructional personnel sufficient to maintain pupil - teacher ratios not to exceed the following: a. Serious emotional disturbance - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children; b. Hearing impairment/deafness - 1 teacher for every 7 children with 1 aide for every 3 classroom teachers; c. Mental retardation - 1 teacher and 1 aide for every 10 children; d. Severe and Profound Disability - 1 teacher and 1 aide for every 6 children or 1 teacher and 2 aides for every 10 children; e. Visual impairment - 1 teacher for every 7 children with 1 aide for every 3 classroom teachers; f. Other health impairment - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children; g. Orthopedic impairment - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children; h. Specific learning disability - 1 teacher for every 8 children or 1 teacher and 1 aide for every 10 children; i. Multiple disabilities or deaf-blindness - 1 teacher and 1 aide for every 6 students or 1 teacher and 2 aides for every 10 students; j. Autism - 1 teacher for every 6 students or 1 teacher and 1 aide for every 8 students; k. Department of Correctional Education - no greater than an average of 1 teacher and 1 aide for every 10 children;	*no corresponding section in the amendments*	

VA SPED Regulations (1994)	IDEA Amendments 1997	Effective Date
l Woodrow Wilson Rehabilitation Center - no greater than an average of 1 teacher for every 10 children; m Juvenile detention homes - A student/teacher ratio shall be based on the bed capacity of the detention home: 1 teacher per 12 beds. Where unusual or extenuating circumstances exist, the agency may apply to the Superintendent of Public Instruction for an exception to the ratio requirements. Such requests shall be supported by sufficient justification. C. Each facility shall have available adequate and appropriate classroom space, library, and instructional materials and supplies to meet the educational needs of the children.	*no corresponding section in the amendments*	
PART VI **Compliance with §504 of the Rehabilitation Act of 1973, As Amended** §6.1 **For those public elementary or secondary education programs operated by the Virginia Department of Education, the Department shall:** A. Develop an individualized education program for each person who is handicapped as defined by the Rehabilitation Act of 1973 and its amendments; and B. Utilize the system of procedural safeguards specified in these Regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments. §6.2 **Local education agencies, as defined by these Regulations, other than the Virginia Department of Education, may utilize the due process hearing system specified in these Regulations to resolve disputes regarding the identification, evaluation or educational placement of persons who are handicapped as defined by the Rehabilitation Act of 1973 and its amendments.**	**SEC. 615. (l) RULE OF CONSTRUCTION** - Nothing in this title shall be construed to restrict or limit the rights, procedures, and remedies available under the Constitution, the Americans with Disabilities Act of 1990, Title V of the Rehabilitation Act of 1973, or other Federal laws protecting the rights of children with disabilities, except that before the filing of a civil action under such laws seeking relief that is also available under this part, the procedures under subsections (f) and (g) shall be exhausted to the same extent as would be required had the action been brought under this part.	6/4/97

VA Comprehensive Services Act	IDEA Amendments 1997	Effective Date
Comprehensive Services Act - - Implementation Manual II. A. 4.d.(8) Community Policy and Management Teams must ensure that children and youths who are receiving mandated services (students with an Individualized Education Plan [sic] and children/youth in foster care) receive access to funds without delay. Although the Community Policy and Management Team can review the Individualized Education Plan, it cannot overrule these decisions, or in any way limit the expenditure of funds associated with the mandated services specified.	**SEC. 612. (a) (12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES -** **(A) ESTABLISHING RESPONSIBILITY FOR SERVICES** - The Chief Executive Officer or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following: (i) **AGENCY FINANCIAL RESPONSIBILITY**- An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP). (ii) **CONDITIONS AND TERMS OF REIMBURSEMENT** - The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies. (iii) **INTERAGENCY DISPUTES** - Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.	6/4/97

VA Comprehensive Services Act	IDEA Amendments 1997	Effective Date
	(iv) **COORDINATION OF SERVICES PROCEDURES** - Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i). SEC. 612. **(a) (12) (B) OBLIGATION OF PUBLIC AGENCY**- (i) **IN GENERAL** - If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement. (ii) **REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY**- If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).	6/4/97

Appendix A

Idea Amendments
Section 601

(c)Findings and (d)Purposes

APPENDIX A - IDEA AMENDMENTS
SEC. 601. (c) FINDINGS AND (d) PURPOSES

‘(c) FINDINGS- The Congress finds the following:

‘(1) Disability is a natural part of the human experience and in no way diminishes the right of individuals to participate in or contribute to society. Improving educational results for children with disabilities is an essential element of our national policy of ensuring equality of opportunity, full participation, independent living, and economic self-sufficiency for individuals with disabilities.

‘(2) Before the date of the enactment of the Education for All Handicapped Children Act of 1975 (Public Law 94-142)--

‘(A) the special educational needs of children with disabilities were not being fully met;

‘(B) more than one-half of the children with disabilities in the United States did not receive appropriate educational services that would enable such children to have full equality of opportunity;

‘(C) 1,000,000 of the children with disabilities in the United States were excluded entirely from the public school system and did not go through the educational process with their peers;

‘(D) there were many children with disabilities throughout the United States participating in regular school programs whose disabilities prevented such children from having a successful educational experience because their disabilities were undetected; and

‘(E) because of the lack of adequate services within the public school system, families were often forced to find services outside the public school system, often at great distance from their residence and at their own expense.

‘(3) Since the enactment and implementation of the Education for All Handicapped Children Act of 1975, this Act has been successful in ensuring children with disabilities and the families of such children access to a free appropriate public education and in improving educational results for children with disabilities.

‘(4) However, the implementation of this Act has been impeded by low expectations, and an insufficient focus on applying replicable research on proven methods of teaching and learning for children with disabilities.

‘(5) Over 20 years of research and experience has demonstrated that the education of children with disabilities can be made more effective by--

‘(A) having high expectations for such children and ensuring their access in the general curriculum to the maximum extent possible;

‘(B) strengthening the role of parents and ensuring that families of such children have meaningful opportunities to participate in the education of their children at school and at home;

‘(C) coordinating this Act with other local, educational service agency, State, and Federal school improvement efforts in order to ensure that such children benefit from such efforts and that special education can become a service for such children rather than a place where they are sent;

‘(D) providing appropriate special education and related services and aids and supports in the regular classroom to such children, whenever appropriate;

‘(E) supporting high-quality, intensive professional development for all personnel who work with such children in order to ensure that they have the skills and knowledge necessary to enable them--

‘(i) to meet developmental goals and, to the maximum extent possible, those challenging expectations that have been established for all children; and

‘(ii) to be prepared to lead productive, independent, adult lives, to the maximum extent possible;

‘(F) providing incentives for whole-school approaches and pre-referral intervention to reduce the need to label children as disabled in order to address their learning needs; and

‘(G) focusing resources on teaching and learning while reducing paperwork and requirements that do not assist in improving educational results.

‘(6) While States, local educational agencies, and educational service agencies are responsible for providing an education for all children with disabilities, it is in the national interest that the Federal Government have a role in assisting State and local efforts to educate children with disabilities in order to improve results for such children and to ensure equal protection of the law.

‘(7)(A) The Federal Government must be responsive to the growing needs of an increasingly more diverse society. A more equitable allocation of resources is essential for the Federal Government to meet its responsibility to provide an equal educational opportunity for all individuals.

‘(B) America's racial profile is rapidly changing. Between 1980 and 1990, the rate of increase in the population for white Americans was 6 percent, while the rate of increase for racial and ethnic minorities was much higher: 53 percent for Hispanics, 13.2 percent for African-Americans, and 107.8 percent for Asians.

‘(C) By the year 2000, this Nation will have 275,000,000 people, nearly one of every three of whom will be either African-American, Hispanic, Asian-American, or American Indian.

‘(D) Taken together as a group, minority children are comprising an ever larger percentage of public school students. Large-city school populations are overwhelmingly minority, for example: for fall 1993, the figure for Miami was 84 percent; Chicago, 89 percent; Philadelphia, 78 percent; Baltimore, 84 percent; Houston, 88 percent; and Los Angeles, 88 percent.

‘(E) Recruitment efforts within special education must focus on bringing larger numbers of minorities into the profession in order to provide appropriate practitioner knowledge, role models, and sufficient manpower to address the clearly changing demography of special education.

‘(F) The limited English proficient population is the fastest growing in our Nation, and the growth is occurring in many parts of our Nation. In the Nation's 2 largest school districts, limited English proficient students make up almost half of all students initially entering school at the kindergarten level. Studies have documented apparent discrepancies in the levels of referral and placement of limited English proficient children in special education. The Department of Education has found that services provided to limited English proficient students often do not respond primarily to the pupil's academic needs. These trends pose special challenges for special education in the referral, assessment, and services for our Nation's students from non-English language backgrounds.

"(8)(A) Greater efforts are needed to prevent the intensification of problems connected with mislabeling and high dropout rates among minority children with disabilities.

"(B) More minority children continue to be served in special education than would be expected from the percentage of minority students in the general school population.

"(C) Poor African-American children are 2.3 times more likely to be identified by their teacher as having mental retardation than their white counterpart.

"(D) Although African-Americans represent 16 percent of elementary and secondary enrollments, they constitute 21 percent of total enrollments in special education.

"(E) The drop-out rate is 68 percent higher for minorities than for whites.

"(F) More than 50 percent of minority students in large cities drop out of school.

"(9)(A) The opportunity for full participation in awards for grants and contracts; boards of organizations receiving funds under this Act; and peer review panels; and training of professionals in the area of special education by minority individuals, organizations, and historically black colleges and universities is essential if we are to obtain greater success in the education of minority children with disabilities.

"(B) In 1993, of the 915,000 college and university professors, 4.9 percent were African-American and 2.4 percent were Hispanic. Of the 2,940,000 teachers, prekindergarten through high school, 6.8 percent were African-American and 4.1 percent were Hispanic.

"(C) Students from minority groups comprise more than 50 percent of K-12 public school enrollment in seven States yet minority enrollment in teacher training programs is less than 15 percent in all but six States.

"(D) As the number of African-American and Hispanic students in special education increases, the number of minority teachers and related service personnel produced in our colleges and universities continues to decrease.

"(E) Ten years ago, 12 percent of the United States teaching force in public elementary and secondary schools were members of a minority group. Minorities comprised 21 percent of the national population at that time and were clearly underrepresented then among employed teachers. Today, the elementary and secondary teaching force is 13 percent minority, while one-third of the students in public schools are minority children.

"(F) As recently as 1991, historically black colleges and universities enrolled 44 percent of the African-American teacher trainees in the Nation. However, in 1993, historically black colleges and universities received only 4 percent of the discretionary funds for special education and related services personnel training under this Act.

"(G) While African-American students constitute 28 percent of total enrollment in special education, only 11.2 percent of individuals enrolled in preservice training programs for special education are African-American.

"(H) In 1986-87, of the degrees conferred in education at the B.A., M.A., and Ph.D. levels, only 6, 8, and 8 percent, respectively, were awarded to African-American or Hispanic students.

'(10) Minorities and underserved persons are socially disadvantaged because of the lack of opportunities in training and educational programs, undergirded by the practices in the private sector that impede their full participation in the mainstream of society.

'(d) PURPOSES- The purposes of this title are--

'(1)(A) to ensure that all children with disabilities have available to them a free appropriate public education that emphasizes special education and related services designed to meet their unique needs and prepare them for employment and independent living;

'(B) to ensure that the rights of children with disabilities and parents of such children are protected; and

'(C) to assist States, localities, educational service agencies, and Federal agencies to provide for the education of all children with disabilities;

'(2) to assist States in the implementation of a statewide, comprehensive, coordinated, multidisciplinary, interagency system of early intervention services for infants and toddlers with disabilities and their families;

'(3) to ensure that educators and parents have the necessary tools to improve educational results for children with disabilities by supporting systemic-change activities; coordinated research and personnel preparation; coordinated technical assistance, dissemination, and support; and technology development and media services; and

'(4) to assess, and ensure the effectiveness of, efforts to educate children with disabilities.

Appendix B

Idea Amendments
Section 612

State Eligibility

APPENDIX B: IDEA AMENDMENTS
SEC. 612. STATE ELIGIBILITY.

‘(a) IN GENERAL- A State is eligible for assistance under this part for a fiscal year if the State demonstrates to the satisfaction of the Secretary that the State has in effect policies and procedures to ensure that it meets each of the following conditions:

‘(1) FREE APPROPRIATE PUBLIC EDUCATION-

‘(A) IN GENERAL- A free appropriate public education is available to all children with disabilities residing in the State between the ages of 3 and 21, inclusive, including children with disabilities who have been suspended or expelled from school.

‘(B) LIMITATION- The obligation to make a free appropriate public education available to all children with disabilities does not apply with respect to children:

‘(i) aged 3 through 5 and 18 through 21 in a State to the extent that its application to those children would be inconsistent with State law or practice, or the order of any court, respecting the provision of public education to children in those age ranges; and

‘(ii) aged 18 through 21 to the extent that State law does not require that special education and related services under this part be provided to children with disabilities who, in the educational placement prior to their incarceration in an adult correctional facility:

‘(I) were not actually identified as being a child with a disability under section 602(3) of this Act; or

‘(II) did not have an individualized education program under this part.

‘(2) FULL EDUCATIONAL OPPORTUNITY GOAL- The State has established a goal of providing full educational opportunity to all children with disabilities and a detailed timetable for accomplishing that goal.

‘(3) CHILD FIND-

‘(A) IN GENERAL- All children with disabilities residing in the State, including children with disabilities attending private schools, regardless of the severity of their disabilities, and who are in need of special education and related services, are identified, located, and evaluated and a practical method is developed and implemented to determine which children with disabilities are currently receiving needed special education and related services.

‘(B) CONSTRUCTION- Nothing in this Act requires that children be classified by their disability so long as each child who has a disability listed in section 602 and who, by reason of that disability, needs special education and related services is regarded as a child with a disability under this part.

‘(4) INDIVIDUALIZED EDUCATION PROGRAM- An individualized education program, or an individualized family service plan that meets the requirements of section 636(d), is developed, reviewed, and revised for each child with a disability in accordance with section 614(d).

‘(5) LEAST RESTRICTIVE ENVIRONMENT-

‘(A) IN GENERAL- To the maximum extent appropriate, children with disabilities, including children in public or private institutions or other care facilities, are educated with children who are not disabled, and special classes, separate schooling, or other removal of children with disabilities from the regular educational environment occurs only when the nature or severity of the disability of a child is such that education in regular classes with the use of supplementary aids and services cannot be achieved satisfactorily.

‘(B) ADDITIONAL REQUIREMENT-

‘(i) IN GENERAL- If the State uses a funding mechanism by which the State distributes State funds on the basis of the type of setting in which a child is served, the funding mechanism does not result in placements that violate the requirements of subparagraph (A).

‘(ii) ASSURANCE- If the State does not have policies and procedures to ensure compliance with clause (i), the State shall provide the Secretary an assurance that it will revise the funding mechanism as soon as feasible to ensure that such mechanism does not result in such placements.

‘(6) PROCEDURAL SAFEGUARDS-

‘(A) IN GENERAL- Children with disabilities and their parents are afforded the procedural safeguards required by section 615.

‘(B) ADDITIONAL PROCEDURAL SAFEGUARDS- Procedures to ensure that testing and evaluation materials and procedures utilized for the purposes of evaluation and placement of children with disabilities will be selected and administered so as not to be racially or culturally discriminatory. Such materials or procedures shall be provided and administered in the child's native language or mode of communication, unless it clearly is not feasible to do so, and no single procedure shall be the sole criterion for determining an appropriate educational program for a child.

‘(7) EVALUATION- Children with disabilities are evaluated in accordance with subsections (a) through (c) of section 614.

‘(8) CONFIDENTIALITY- Agencies in the State comply with section 617(c) (relating to the confidentiality of records and information).

‘(9) TRANSITION FROM PART C TO PRESCHOOL PROGRAMS- Children participating in early-intervention programs assisted under part C, and who will participate in preschool programs assisted under this part, experience a smooth and effective transition to those preschool programs in a manner consistent with section 637(a)(8). By the third birthday of such a child, an individualized education program or, if consistent with sections 614(d)(2)(B) and 636(d), an individualized family service plan, has been developed and is being implemented for the child. The local educational agency will participate in transition planning conferences arranged by the designated lead agency under section 637(a)(8).

‘(10) CHILDREN IN PRIVATE SCHOOLS-

‘(A) CHILDREN ENROLLED IN PRIVATE SCHOOLS BY THEIR PARENTS-

‘(i) IN GENERAL- To the extent consistent with the number and location of children with disabilities in the State who are enrolled by their parents in private elementary and secondary schools, provision is made for the participation of those children in the program assisted or carried out under this part by providing for such children special education and related services in accordance with the following requirements, unless the Secretary has arranged for services to those children under subsection (f):

‘(I) Amounts expended for the provision of those services by a local educational agency shall be equal to a proportionate amount of Federal funds made available under this part.

‘(II) Such services may be provided to children with disabilities on the premises of private, including parochial, schools, to the extent consistent with law.

‘(ii) CHILD-FIND REQUIREMENT- The requirements of paragraph (3) of this subsection (relating to child find) shall apply with respect to children with disabilities in the State who are enrolled in private, including parochial, elementary and secondary schools.

‘(B) CHILDREN PLACED IN, OR REFERRED TO, PRIVATE SCHOOLS BY PUBLIC AGENCIES-

‘(i) IN GENERAL- Children with disabilities in private schools and facilities are provided special education and related services, in accordance with an individualized education program, at no cost to their parents, if such children are placed in, or referred to, such schools or facilities by the State or appropriate local educational agency as the means of carrying out the requirements of this part or any other applicable law requiring the provision of special education and related services to all children with disabilities within such State.

‘(ii) STANDARDS- In all cases described in clause (i), the State educational agency shall determine whether such schools and facilities meet standards that apply to State and local educational agencies and that children so served have all the rights they would have if served by such agencies.

‘(C) PAYMENT FOR EDUCATION OF CHILDREN ENROLLED IN PRIVATE SCHOOLS WITHOUT CONSENT OF OR REFERRAL BY THE PUBLIC AGENCY-

‘(i) IN GENERAL- Subject to subparagraph (A), this part does not require a local educational agency to pay for the cost of education, including special education and related services, of a child with a disability at a private school or facility if that agency made a free appropriate public education available to the child and the parents elected to place the child in such private school or facility.

‘(ii) REIMBURSEMENT FOR PRIVATE SCHOOL PLACEMENT- If the parents of a child with a disability, who previously received special education and related services under the authority of a public agency, enroll the child in a private elementary or secondary school without the consent of or referral by the public agency, a court or a hearing officer may require the agency to reimburse the parents for the cost of that enrollment if the court or hearing officer finds that the agency had not made a free appropriate public education available to the child in a timely manner prior to that enrollment.

‘(iii) LIMITATION ON REIMBURSEMENT- The cost of reimbursement described in clause (ii) may be reduced or denied--

‘(I) if--

‘(aa) at the most recent IEP meeting that the parents attended prior to removal of the child from the public school, the parents did not inform the IEP Team that they were rejecting the placement proposed by the public agency to provide a free appropriate public education to their child, including stating their concerns and their intent to enroll their child in a private school at public

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expense; or

`(bb) 10 business days (including any holidays that occur on a business day) prior to the removal of the child from the public school, the parents did not give written notice to the public agency of the information described in division (aa);

`(II) if, prior to the parents' removal of the child from the public school, the public agency informed the parents, through the notice requirements described in section 615(b)(7), of its intent to evaluate the child (including a statement of the purpose of the evaluation that was appropriate and reasonable), but the parents did not make the child available for such evaluation; or

`(III) upon a judicial finding of unreasonableness with respect to actions taken by the parents.

`(iv) EXCEPTION- Notwithstanding the notice requirement in clause (iii)(I), the cost of reimbursement may not be reduced or denied for failure to provide such notice if--

`(I) the parent is illiterate and cannot write in English;

`(II) compliance with clause (iii)(I) would likely result in physical or serious emotional harm to the child;

`(III) the school prevented the parent from providing such notice; or

`(IV) the parents had not received notice, pursuant to section 615, of the notice requirement in clause (iii)(I).

`(11) STATE EDUCATIONAL AGENCY RESPONSIBLE FOR GENERAL SUPERVISION-

`(A) IN GENERAL- The State educational agency is responsible for ensuring that--

`(i) the requirements of this part are met; and

`(ii) all educational programs for children with disabilities in the State, including all such programs administered by any other State or local agency--

`(I) are under the general supervision of individuals in the State who are responsible for educational programs for children with disabilities; and

`(II) meet the educational standards of the State educational agency.

`(B) LIMITATION- Subparagraph (A) shall not limit the responsibility of agencies in the State other than the State educational agency to provide, or pay for some or all of the costs of, a free appropriate public education for any child with a disability in the State.

`(C) EXCEPTION- Notwithstanding subparagraphs (A) and (B), the Governor (or another individual pursuant to State law), consistent with State law, may assign to any public agency in the State the responsibility of ensuring that the requirements of this part are met with respect to children with disabilities who are convicted as adults under State law and incarcerated in adult prisons.

'(12) OBLIGATIONS RELATED TO AND METHODS OF ENSURING SERVICES-

'(A) ESTABLISHING RESPONSIBILITY FOR SERVICES- The Chief Executive Officer or designee of the officer shall ensure that an interagency agreement or other mechanism for interagency coordination is in effect between each public agency described in subparagraph (B) and the State educational agency, in order to ensure that all services described in subparagraph (B)(i) that are needed to ensure a free appropriate public education are provided, including the provision of such services during the pendency of any dispute under clause (iii). Such agreement or mechanism shall include the following:

'(i) AGENCY FINANCIAL RESPONSIBILITY- An identification of, or a method for defining, the financial responsibility of each agency for providing services described in subparagraph (B)(i) to ensure a free appropriate public education to children with disabilities, provided that the financial responsibility of each public agency described in subparagraph (B), including the State Medicaid agency and other public insurers of children with disabilities, shall precede the financial responsibility of the local educational agency (or the State agency responsible for developing the child's IEP).

'(ii) CONDITIONS AND TERMS OF REIMBURSEMENT- The conditions, terms, and procedures under which a local educational agency shall be reimbursed by other agencies.

'(iii) INTERAGENCY DISPUTES- Procedures for resolving interagency disputes (including procedures under which local educational agencies may initiate proceedings) under the agreement or other mechanism to secure reimbursement from other agencies or otherwise implement the provisions of the agreement or mechanism.

'(iv) COORDINATION OF SERVICES PROCEDURES- Policies and procedures for agencies to determine and identify the interagency coordination responsibilities of each agency to promote the coordination and timely and appropriate delivery of services described in subparagraph (B)(i).

'(B) OBLIGATION OF PUBLIC AGENCY-

'(i) IN GENERAL- If any public agency other than an educational agency is otherwise obligated under Federal or State law, or assigned responsibility under State policy or pursuant to subparagraph (A), to provide or pay for any services that are also considered special education or related services (such as, but not limited to, services described in sections 602(1) relating to assistive technology devices, 602(2) relating to assistive technology services, 602(22) relating to related services, 602(29) relating to supplementary aids and services, and 602(30) relating to transition services) that are necessary for ensuring a free appropriate public education to children with disabilities within the State, such public agency shall fulfill that obligation or responsibility, either directly or through contract or other arrangement.

'(ii) REIMBURSEMENT FOR SERVICES BY PUBLIC AGENCY- If a public agency other than an educational agency fails to provide or pay for the special education and related services described in clause (i), the local educational agency (or State agency responsible for developing the child's IEP) shall provide or pay for such services to the child. Such local educational agency or State agency may then claim reimbursement for the services from the public agency that failed to provide or pay for such services and such public agency shall reimburse the local educational agency or State agency pursuant to the terms of the interagency agreement or other mechanism described in subparagraph (A)(i) according to the procedures established in such agreement pursuant to subparagraph (A)(ii).

'(C) SPECIAL RULE- The requirements of subparagraph (A) may be met through--

'(i) state statute or regulation;

'(ii) signed agreements between respective agency officials that clearly identify the responsibilities of each agency relating to the provision of services; or

'(iii) other appropriate written methods as determined by the Chief Executive Officer of the State or designee of the officer.

'(13) PROCEDURAL REQUIREMENTS RELATING TO LOCAL EDUCATIONAL AGENCY ELIGIBILITY- The State educational agency will not make a final determination that a local educational agency is not eligible for assistance under this part without first affording that agency reasonable notice and an opportunity for a hearing.

'(14) COMPREHENSIVE SYSTEM OF PERSONNEL DEVELOPMENT- The State has in effect, consistent with the purposes of this Act and with section 635(a)(8), a comprehensive system of personnel development that is designed to ensure an adequate supply of qualified special education, regular education, and related services personnel that meets the requirements for a State improvement plan relating to personnel development in subsections (b)(2)(B) and (c)(3)(D) of section 653.

'(15) PERSONNEL STANDARDS-

'(A) IN GENERAL- The State educational agency has established and maintains standards to ensure that personnel necessary to carry out this part are appropriately and adequately prepared and trained.

'(B) STANDARDS DESCRIBED- Such standards shall--

'(i) be consistent with any State-approved or State-recognized certification, licensing, registration, or other comparable requirements that apply to the professional discipline in which those personnel are providing special education or related services;

'(ii) to the extent the standards described in subparagraph (A) are not based on the highest requirements in the State applicable to a specific profession or discipline, the State is taking steps to require retraining or hiring of personnel that meet appropriate professional requirements in the State; and

'(iii) allow paraprofessionals and assistants who are appropriately trained and supervised, in accordance with State law, regulations, or written policy, in meeting the requirements of this part to be used to assist in the provision of special education and related services to children with disabilities under this part.

'(C) POLICY- In implementing this paragraph, a State may adopt a policy that includes a requirement that local educational agencies in the State make an ongoing good-faith effort to recruit and hire appropriately and adequately trained personnel to provide special education and related services to children with disabilities, including, in a geographic area of the State where there is a shortage of such personnel, the most qualified individuals available who are making satisfactory progress toward completing applicable course work necessary to meet the standards described in subparagraph (B)(i), consistent with State law, and the steps described in subparagraph (B)(ii) within three years.

‘(16) PERFORMANCE GOALS AND INDICATORS- The State--

‘(A) has established goals for the performance of children with disabilities in the State that--

‘(i) will promote the purposes of this Act, as stated in section 601(d); and

‘(ii) are consistent, to the maximum extent appropriate, with other goals and standards for children established by the State;

‘(B) has established performance indicators the State will use to assess progress toward achieving those goals that, at a minimum, address the performance of children with disabilities on assessments, drop-out rates, and graduation rates;

‘(C) will, every two years, report to the Secretary and the public on the progress of the State, and of children with disabilities in the State, toward meeting the goals established under subparagraph (A); and

‘(D) based on its assessment of that progress, will revise its State improvement plan under subpart 1 of part D as may be needed to improve its performance, if the State receives assistance under that subpart.

‘(17) PARTICIPATION IN ASSESSMENTS-

‘(A) IN GENERAL- Children with disabilities are included in general State and district-wide assessment programs, with appropriate accommodations, where necessary. As appropriate, the State or local educational agency--

‘(i) develops guidelines for the participation of children with disabilities in alternate assessments for those children who cannot participate in State and district-wide assessment programs; and

‘(ii) develops and, beginning not later than July 1, 2000, conducts those alternate assessments.

‘(B) REPORTS- The State educational agency makes available to the public, and reports to the public with the same frequency and in the same detail as it reports on the assessment of nondisabled children, the following:

‘(i) The number of children with disabilities participating in regular assessments.

‘(ii) The number of those children participating in alternate assessments.

‘(iii)(I) The performance of those children on regular assessments (beginning not later than July 1, 1998) and on alternate assessments (not later than July 1, 2000), if doing so would be statistically sound and would not result in the disclosure of performance results identifiable to individual children.

‘(II) Data relating to the performance of children described under subclause (I) shall be disaggregated--

‘(aa) for assessments conducted after July 1, 1998; and

‘(bb) for assessments conducted before July 1, 1998, if the State is required to disaggregate such data prior to July 1, 1998.

‘(18) SUPPLEMENTATION OF STATE, LOCAL, AND OTHER FEDERAL FUNDS-

‘(A) EXPENDITURES- Funds paid to a State under this part will be expended in accordance with all the provisions of this part.

‘(B) PROHIBITION AGAINST COMMINGLING- Funds paid to a State under this part will not be commingled with State funds.

‘(C) PROHIBITION AGAINST SUPPLANTATION AND CONDITIONS FOR WAIVER BY SECRETARY- Except as provided in section 613, funds paid to a State under this part will be used to supplement the level of Federal, State, and local funds (including funds that are not under the direct control of State or local educational agencies) expended for special education and related services provided to children with disabilities under this part and in no case to supplant such Federal, State, and local funds, except that, where the State provides clear and convincing evidence that all children with disabilities have available to them a free appropriate public education, the Secretary may waive, in whole or in part, the requirements of this subparagraph if the Secretary concurs with the evidence provided by the State.

‘(19) MAINTENANCE OF STATE FINANCIAL SUPPORT-

‘(A) IN GENERAL- The State does not reduce the amount of State financial support for special education and related services for children with disabilities, or otherwise made available because of the excess costs of educating those children, below the amount of that support for the preceding fiscal year.

‘(B) REDUCTION OF FUNDS FOR FAILURE TO MAINTAIN SUPPORT- The Secretary shall reduce the allocation of funds under section 611 for any fiscal year following the fiscal year in which the State fails to comply with the requirement of subparagraph (A) by the same amount by which the State fails to meet the requirement.

‘(C) WAIVERS FOR EXCEPTIONAL OR UNCONTROLLABLE CIRCUMSTANCES- The Secretary may waive the requirement of subparagraph (A) for a State, for one fiscal year at a time, if the Secretary determines that--

‘(i) granting a waiver would be equitable due to exceptional or uncontrollable circumstances such as a natural disaster or a precipitous and unforeseen decline in the financial resources of the State; or

‘(ii) the State meets the standard in paragraph (18)(C) of this section for a waiver of the requirement to supplement, and not to supplant, funds received under this part.

‘(D) SUBSEQUENT YEARS- If, for any year, a State fails to meet the requirement of subparagraph (A), including any year for which the State is granted a waiver under subparagraph (C), the financial support required of the State in future years under subparagraph (A) shall be the amount that would have been required in the absence of that failure and not the reduced level of the State's support.

‘(E) REGULATIONS-

‘(i) The Secretary shall, by regulation, establish procedures (including objective criteria and consideration of the results of compliance reviews of the State conducted by the Secretary) for determining whether to grant a waiver under subparagraph (C)(ii).

‘(ii) The Secretary shall publish proposed regulations under clause (i) not later than 6 months after the date of the enactment of the Individuals with Disabilities Education Act Amendments of 1997, and shall issue final regulations under clause (i) not later than 1 year after such date of enactment.

‘(20) PUBLIC PARTICIPATION- Prior to the adoption of any policies and procedures needed to comply with this section (including any amendments to such policies and procedures), the State ensures that there are public hearings, adequate notice of the hearings, and an opportunity for comment available to the general public, including individuals with disabilities and parents of children with disabilities.

‘(21) STATE ADVISORY PANEL-

‘(A) IN GENERAL- The State has established and maintains an advisory panel for the purpose of providing policy guidance with respect to special education and related services for children with disabilities in the State.

‘(B) MEMBERSHIP- Such advisory panel shall consist of members appointed by the Governor, or any other official authorized under State law to make such appointments, that is representative of the State population and that is composed of individuals involved in, or concerned with, the education of children with disabilities, including--

‘(i) parents of children with disabilities;

‘(ii) individuals with disabilities;

‘(iii) teachers;

‘(iv) representatives of institutions of higher education that prepare special education and related services personnel;

‘(v) State and local education officials;

‘(vi) administrators of programs for children with disabilities;

‘(vii) representatives of other State agencies involved in the financing or delivery of related services to children with disabilities;

‘(viii) representatives of private schools and public charter schools;

‘(ix) at least one representative of a vocational, community, or business organization concerned with the provision of transition services to children with disabilities; and

‘(x) representatives from the State juvenile and adult corrections agencies.

‘(C) SPECIAL RULE- A majority of the members of the panel shall be individuals with disabilities or parents of children with disabilities.

‘(D) DUTIES- The advisory panel shall--

‘(i) advise the State educational agency of unmet needs within the State in the education of children with disabilities;

‘(ii) comment publicly on any rules or regulations proposed by the State regarding the education of children with disabilities;

‘(iii) advise the State educational agency in developing evaluations and reporting on data to the Secretary under section 618;

‘(iv) advise the State educational agency in developing corrective action plans to address findings identified in Federal monitoring reports under this part; and '(v) advise the State educational agency in developing and implementing policies relating to the coordination of services for children with disabilities.

'(22) SUSPENSION AND EXPULSION RATES-

'(A) IN GENERAL- The State educational agency examines data to determine if significant discrepancies are occurring in the rate of long-term suspensions and expulsions of children with disabilities--

'(i) among local educational agencies in the State; or

'(ii) compared to such rates for nondisabled children within such agencies.

'(B) REVIEW AND REVISION OF POLICIES- If such discrepancies are occurring, the State educational agency reviews and, if appropriate, revises (or requires the affected State or local educational agency to revise) its policies, procedures, and practices relating to the development and implementation of IEPs, the use of behavioral interventions, and procedural safeguards, to ensure that such policies, procedures, and practices comply with this Act.

'(b) STATE EDUCATIONAL AGENCY AS PROVIDER OF FREE APPROPRIATE PUBLIC EDUCATION OR DIRECT SERVICES- If the State educational agency provides free appropriate public education to children with disabilities, or provides direct services to such children, such agency--

'(1) shall comply with any additional requirements of section 613(a), as if such agency were a local educational agency; and

'(2) may use amounts that are otherwise available to such agency under this part to serve those children without regard to section 613(a)(2)(A)(i) (relating to excess costs).

'(c) EXCEPTION FOR PRIOR STATE PLANS-

'(1) IN GENERAL- If a State has on file with the Secretary policies and procedures that demonstrate that such State meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the Secretary shall consider such State to have met such requirement for purposes of receiving a grant under this part.

'(2) MODIFICATIONS MADE BY STATE- Subject to paragraph (3), an application submitted by a State in accordance with this section shall remain in effect until the State submits to the Secretary such modifications as the State deems necessary. This section shall apply to a modification to an application to the same extent and in the same manner as this section applies to the original plan.

'(3) MODIFICATIONS REQUIRED BY THE SECRETARY- If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by a Federal court or a State's highest court, or there is an official finding of noncompliance with Federal law or regulations, the Secretary may require a State to modify its application only to the extent necessary to ensure the State's compliance with this part.

'(d) APPROVAL BY THE SECRETARY-

'(1) IN GENERAL- If the Secretary determines that a State is eligible to receive a grant under this part, the Secretary shall notify the State of that determination.

`(2) NOTICE AND HEARING- The Secretary shall not make a final determination that a State is not eligible to receive a grant under this part until after providing the State--

`(A) with reasonable notice; and

`(B) with an opportunity for a hearing.

`(e) ASSISTANCE UNDER OTHER FEDERAL PROGRAMS- Nothing in this title permits a State to reduce medical and other assistance available, or to alter eligibility, under titles V and XIX of the Social Security Act with respect to the provision of a free appropriate public education for children with disabilities in the State.

`(f) BY-PASS FOR CHILDREN IN PRIVATE SCHOOLS-

`(1) IN GENERAL- If, on the date of enactment of the Education of the Handicapped Act Amendments of 1983, a State educational agency is prohibited by law from providing for the participation in special programs of children with disabilities enrolled in private elementary and secondary schools as required by subsection (a)(10)(A), the Secretary shall, notwithstanding such provision of law, arrange for the provision of services to such children through arrangements which shall be subject to the requirements of such subsection.

`(2) PAYMENTS-

`(A) DETERMINATION OF AMOUNTS- If the Secretary arranges for services pursuant to this subsection, the Secretary, after consultation with the appropriate public and private school officials, shall pay to the provider of such services for a fiscal year an amount per child that does not exceed the amount determined by dividing--

`(i) the total amount received by the State under this part for such fiscal year; by

`(ii) the number of children with disabilities served in the prior year, as reported to the Secretary by the State under section 618.

`(B) WITHHOLDING OF CERTAIN AMOUNTS- Pending final resolution of any investigation or complaint that could result in a determination under this subsection, the Secretary may withhold from the allocation of the affected State educational agency the amount the Secretary estimates would be necessary to pay the cost of services described in subparagraph (A).

`(C) PERIOD OF PAYMENTS- The period under which payments are made under subparagraph (A) shall continue until the Secretary determines that there will no longer be any failure or inability on the part of the State educational agency to meet the requirements of subsection (a)(10)(A).

`(3) NOTICE AND HEARING-

`(A) IN GENERAL- The Secretary shall not take any final action under this subsection until the State educational agency affected by such action has had an opportunity, for at least 45 days after receiving written notice thereof, to submit written objections and to appear before the Secretary or the Secretary's designee to show cause why such action should not be taken.

`(B) REVIEW OF ACTION- If a State educational agency is dissatisfied with the Secretary's final action after a proceeding under subparagraph (A), such agency may, not later than 60 days after notice of such action, file with the United States court of appeals for the circuit in which such State is located a petition for review of that action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Secretary. The Secretary thereupon shall file in the court the record of the proceedings on which the Secretary based the Secretary's action, as provided in section 2112 of title 28, United States Code.

'(C) REVIEW OF FINDINGS OF FACT- The findings of fact by the Secretary, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Secretary to take further evidence, and the Secretary may thereupon make new or modified findings of fact and may modify the Secretary's previous action, and shall file in the court the record of the further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence.

'(D) JURISDICTION OF COURT OF APPEALS; REVIEW BY UNITED STATES SUPREME COURT- Upon the filing of a petition under subparagraph (B), the United States court of appeals shall have jurisdiction to affirm the action of the Secretary or to set it aside, in whole or in part. The judgment of the court shall be subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

Appendix C

IDEA Amendments
Section 613

Local Educational Agency Eligiblity

APPENDIX C - IDEA AMENDMENTS
SEC. 613. LOCAL EDUCATIONAL AGENCY ELIGIBILITY

‘(a) IN GENERAL- A local educational agency is eligible for assistance under this part for a fiscal year if such agency demonstrates to the satisfaction of the State educational agency that it meets each of the following conditions:

‘(1) CONSISTENCY WITH STATE POLICIES- The local educational agency, in providing for the education of children with disabilities within its jurisdiction, has in effect policies, procedures, and programs that are consistent with the State policies and procedures established under section 612.

‘(2) USE OF AMOUNTS-

‘(A) IN GENERAL- Amounts provided to the local educational agency under this part shall be expended in accordance with the applicable provisions of this part and--

‘(i) shall be used only to pay the excess costs of providing special education and related services to children with disabilities;

‘(ii) shall be used to supplement State, local, and other Federal funds and not to supplant such funds; and

‘(iii) shall not be used, except as provided in subparagraphs (B) and (C), to reduce the level of expenditures for the education of children with disabilities made by the local educational agency from local funds below the level of those expenditures for the preceding fiscal year.

‘(B) EXCEPTION- Notwithstanding the restriction in subparagraph (A)(iii), a local educational agency may reduce the level of expenditures where such reduction is attributable to--

‘(i) the voluntary departure, by retirement or otherwise, or departure for just cause, of special education personnel;

‘(ii) a decrease in the enrollment of children with disabilities;

‘(iii) the termination of the obligation of the agency, consistent with this part, to provide a program of special education to a particular child with a disability that is an exceptionally costly program, as determined by the State educational agency, because the child--

‘(I) has left the jurisdiction of the agency;

‘(II) has reached the age at which the obligation of the agency to provide a free appropriate public education to the child has terminated; or

‘(III) no longer needs such program of special education; or

‘(iv) the termination of costly expenditures for long-term purchases, such as the acquisition of equipment or the construction of school facilities.

‘(C) TREATMENT OF FEDERAL FUNDS IN CERTAIN FISCAL YEARS-

‘(i) Notwithstanding clauses (ii) and (iii) of subparagraph (A), for any fiscal year for which amounts appropriated to carry out section 611 exceeds $4,100,000,000, a local educational agency may treat as local funds, for the purpose of such clauses, up to 20 percent of the amount of funds it receives under this part that exceeds the amount it received under this

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part for the previous fiscal year.

'(ii) Notwithstanding clause (i), if a State educational agency determines that a local educational agency is not meeting the requirements of this part, the State educational agency may prohibit the local educational agency from treating funds received under this part as local funds under clause (i) for any fiscal year, only if it is authorized to do so by the State constitution or a State statute.

'(D) SCHOOLWIDE PROGRAMS UNDER TITLE I OF THE ESEA- Notwithstanding subparagraph (A) or any other provision of this part, a local educational agency may use funds received under this part for any fiscal year to carry out a schoolwide program under section 1114 of the Elementary and Secondary Education Act of 1965, except that the amount so used in any such program shall not exceed--

'(i) the number of children with disabilities participating in the schoolwide program; multiplied by

'(ii)(I) the amount received by the local educational agency under this part for that fiscal year; divided by

'(II) the number of children with disabilities in the jurisdiction of that agency.

'(3) PERSONNEL DEVELOPMENT- The local educational agency--

'(A) shall ensure that all personnel necessary to carry out this part are appropriately and adequately prepared, consistent with the requirements of section 653(c)(3)(D); and

'(B) to the extent such agency determines appropriate, shall contribute to and use the comprehensive system of personnel development of the State established under section 612(a)(14).

'(4) PERMISSIVE USE OF FUNDS- Notwithstanding paragraph (2)(A) or section 612(a)(18)(B) (relating to commingled funds), funds provided to the local educational agency under this part may be used for the following activities:

'(A) SERVICES AND AIDS THAT ALSO BENEFIT NONDISABLED CHILDREN- For the costs of special education and related services and supplementary aids and services provided in a regular class or other education-related setting to a child with a disability in accordance with the individualized education program of the child, even if one or more nondisabled children benefit from such services.

'(B) INTEGRATED AND COORDINATED SERVICES SYSTEM- To develop and implement a fully integrated and coordinated services system in accordance with subsection (f).

'(5) TREATMENT OF CHARTER SCHOOLS AND THEIR STUDENTS- In carrying out this part with respect to charter schools that are public schools of the local educational agency, the local educational agency--

'(A) serves children with disabilities attending those schools in the same manner as it serves children with disabilities in its other schools; and

'(B) provides funds under this part to those schools in the same manner as it provides those funds to its other schools.

'(6) INFORMATION FOR STATE EDUCATIONAL AGENCY- The local educational agency shall provide the State educational agency with information necessary to enable the State educational agency to carry out its duties under this part, including, with respect to paragraphs (16) and (17) of section 612(a), information relating to the performance of children with disabilities participating in programs carried out under this part.

‘(7) PUBLIC INFORMATION- The local educational agency shall make available to parents of children with disabilities and to the general public all documents relating to the eligibility of such agency under this part.

‘(b) EXCEPTION FOR PRIOR LOCAL PLANS-

‘(1) IN GENERAL- If a local educational agency or State agency has on file with the State educational agency policies and procedures that demonstrate that such local educational agency, or such State agency, as the case may be, meets any requirement of subsection (a), including any policies and procedures filed under this part as in effect before the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the State educational agency shall consider such local educational agency or State agency, as the case may be, to have met such requirement for purposes of receiving assistance under this part.

‘(2) MODIFICATION MADE BY LOCAL EDUCATIONAL AGENCY- Subject to paragraph (3), an application submitted by a local educational agency in accordance with this section shall remain in effect until it submits to the State educational agency such modifications as the local educational agency deems necessary.

‘(3) MODIFICATIONS REQUIRED BY STATE EDUCATIONAL AGENCY- If, after the effective date of the Individuals with Disabilities Education Act Amendments of 1997, the provisions of this Act are amended (or the regulations developed to carry out this Act are amended), or there is a new interpretation of this Act by Federal or State courts, or there is an official finding of noncompliance with Federal or State law or regulations, the State educational agency may require a local educational agency to modify its application only to the extent necessary to ensure the local educational agency's compliance with this part or State law.

‘(c) NOTIFICATION OF LOCAL EDUCATIONAL AGENCY OR STATE AGENCY IN CASE OF INELIGIBILITY- If the State educational agency determines that a local educational agency or State agency is not eligible under this section, the State educational agency shall notify the local educational agency or State agency, as the case may be, of that determination and shall provide such local educational agency or State agency with reasonable notice and an opportunity for a hearing.

‘(d) LOCAL EDUCATIONAL AGENCY COMPLIANCE-

‘(1) IN GENERAL- If the State educational agency, after reasonable notice and an opportunity for a hearing, finds that a local educational agency or State agency that has been determined to be eligible under this section is failing to comply with any requirement described in subsection (a), the State educational agency shall reduce or shall not provide any further payments to the local educational agency or State agency until the State educational agency is satisfied that the local educational agency or State agency, as the case may be, is complying with that requirement.

‘(2) ADDITIONAL REQUIREMENT- Any State agency or local educational agency in receipt of a notice described in paragraph (1) shall, by means of public notice, take such measures as may be necessary to bring the pendency of an action pursuant to this subsection to the attention of the public within the jurisdiction of such agency.

‘(3) CONSIDERATION- In carrying out its responsibilities under paragraph (1), the State educational agency shall consider any decision made in a hearing held under section 615 that is adverse to the local educational agency or State agency involved in that decision.

'(e) JOINT ESTABLISHMENT OF ELIGIBILITY-

'(1) JOINT ESTABLISHMENT-

'(A) IN GENERAL- A State educational agency may require a local educational agency to establish its eligibility jointly with another local educational agency if the State educational agency determines that the local educational agency would be ineligible under this section because the local educational agency would not be able to establish and maintain programs of sufficient size and scope to effectively meet the needs of children with disabilities.

'(B) CHARTER SCHOOL EXCEPTION- A State educational agency may not require a charter school that is a local educational agency to jointly establish its eligibility under subparagraph (A) unless it is explicitly permitted to do so under the State's charter school statute.

'(2) AMOUNT OF PAYMENTS- If a State educational agency requires the joint establishment of eligibility under paragraph (1), the total amount of funds made available to the affected local educational agencies shall be equal to the sum of the payments that each such local educational agency would have received under section 611(g) if such agencies were eligible for such payments.

'(3) REQUIREMENTS- Local educational agencies that establish joint eligibility under this subsection shall--

'(A) adopt policies and procedures that are consistent with the State's policies and procedures under section 612(a); and

'(B) be jointly responsible for implementing programs that receive assistance under this part.

'(4) REQUIREMENTS FOR EDUCATIONAL SERVICE AGENCIES-

'(A) IN GENERAL- If an educational service agency is required by State law to carry out programs under this part, the joint responsibilities given to local educational agencies under this subsection shall--

'(i) not apply to the administration and disbursement of any payments received by that educational service agency; and

'(ii) be carried out only by that educational service agency.

'(B) ADDITIONAL REQUIREMENT- Notwithstanding any other provision of this subsection, an educational service agency shall provide for the education of children with disabilities in the least restrictive environment, as required by section 612(a)(5).

'(f) COORDINATED SERVICES SYSTEM-

'(1) IN GENERAL- A local educational agency may not use more than 5 percent of the amount such agency receives under this part for any fiscal year, in combination with other amounts (which shall include amounts other than education funds), to develop and implement a coordinated services system designed to improve results for children and families, including children with disabilities and their families.

'(2) ACTIVITIES- In implementing a coordinated services system under this subsection, a local educational agency may carry out activities that include--

'(A) improving the effectiveness and efficiency of service delivery, including developing strategies that promote accountability for results;

‘(B) service coordination and case management that facilitates the linkage of individualized education programs under this part and individualized family service plans under part C with individualized service plans under multiple Federal and State programs, such as title I of the Rehabilitation Act of 1973 (vocational rehabilitation), title XIX of the Social Security Act (Medicaid), and title XVI of the Social Security Act (supplemental security income);

‘(C) developing and implementing interagency financing strategies for the provision of education, health, mental health, and social services, including transition services and related services under this Act; and

‘(D) interagency personnel development for individuals working on coordinated services.

‘(3) COORDINATION WITH CERTAIN PROJECTS UNDER ELEMENTARY AND SECONDARY EDUCATION ACT OF 1965- If a local educational agency is carrying out a coordinated services project under title XI of the Elementary and Secondary Education Act of 1965 and a coordinated services project under this part in the same schools, such agency shall use amounts under this subsection in accordance with the requirements of that title.

‘(g) SCHOOL-BASED IMPROVEMENT PLAN-

‘(1) IN GENERAL- Each local educational agency may, in accordance with paragraph (2), use funds made available under this part to permit a public school within the jurisdiction of the local educational agency to design, implement, and evaluate a school-based improvement plan that is consistent with the purposes described in section 651(b) and that is designed to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4) in that public school.

‘(2) AUTHORITY-

‘(A) IN GENERAL- A State educational agency may grant authority to a local educational agency to permit a public school described in paragraph (1) (through a school-based standing panel established under paragraph (4)(B)) to design, implement, and evaluate a school-based improvement plan described in paragraph (1) for a period not to exceed 3 years.

‘(B) RESPONSIBILITY OF LOCAL EDUCATIONAL AGENCY- If a State educational agency grants the authority described in subparagraph (A), a local educational agency that is granted such authority shall have the sole responsibility of oversight of all activities relating to the design, implementation, and evaluation of any school-based improvement plan that a public school is permitted to design under this subsection.

‘(3) PLAN REQUIREMENTS- A school-based improvement plan described in paragraph (1) shall--

‘(A) be designed to be consistent with the purposes described in section 651(b) and to improve educational and transitional results for all children with disabilities and, as appropriate, for other children consistent with subparagraphs (A) and (B) of subsection (a)(4), who attend the school for which the plan is designed and implemented;

‘(B) be designed, evaluated, and, as appropriate, implemented by a school-based standing panel established in accordance with paragraph (4)(B);

‘(C) include goals and measurable indicators to assess the progress of the public school in meeting such goals; and

'(D) ensure that all children with disabilities receive the services described in the individualized education programs of such children.

'(4) RESPONSIBILITIES OF THE LOCAL EDUCATIONAL AGENCY- A local educational agency that is granted authority under paragraph (2) to permit a public school to design, implement, and evaluate a school-based improvement plan shall--

'(A) select each school under the jurisdiction of such agency that is eligible to design, implement, and evaluate such a plan;

'(B) require each school selected under subparagraph (A), in accordance with criteria established by such local educational agency under subparagraph (C), to establish a school-based standing panel to carry out the duties described in paragraph (3)(B);

'(C) establish--

'(i) criteria that shall be used by such local educational agency in the selection of an eligible school under subparagraph (A);

'(ii) criteria that shall be used by a public school selected under subparagraph (A) in the establishment of a school-based standing panel to carry out the duties described in paragraph (3)(B) and that shall ensure that the membership of such panel reflects the diversity of the community in which the public school is located and includes, at a minimum--

'(I) parents of children with disabilities who attend such public school, including parents of children with disabilities from unserved and underserved populations, as appropriate;

'(II) special education and general education teachers of such public school;

'(III) special education and general education administrators, or the designee of such administrators, of such public school; and

'(IV) related services providers who are responsible for providing services to the children with disabilities who attend such public school; and

'(iii) criteria that shall be used by such local educational agency with respect to the distribution of funds under this part to carry out this subsection;

'(D) disseminate the criteria established under subparagraph (C) to local school district personnel and local parent organizations within the jurisdiction of such local educational agency;

'(E) require a public school that desires to design, implement, and evaluate a school-based improvement plan to submit an application at such time, in such manner, and accompanied by such information as such local educational agency shall reasonably require; and

'(F) establish procedures for approval by such local educational agency of a school-based improvement plan designed under this subsection.

'(5) LIMITATION- A school-based improvement plan described in paragraph (1) may be submitted to a local educational agency for approval only if a consensus with respect to any matter relating to the design, implementation, or evaluation of the goals of such plan is reached by the school-based standing panel that designed such plan.

'(6) ADDITIONAL REQUIREMENTS-

'(A) PARENTAL INVOLVEMENT- In carrying out the requirements of this subsection, a local educational agency shall ensure that the parents of children with disabilities are involved in the design, evaluation, and, where appropriate, implementation of school-based improvement plans in accordance with this subsection.

'(B) PLAN APPROVAL- A local educational agency may approve a school-based improvement plan of a public school within the jurisdiction of such agency for a period of 3 years, if--

'(i) the approval is consistent with the policies, procedures, and practices established by such local educational agency and in accordance with this subsection; and

'(ii) a majority of parents of children who are members of the school-based standing panel, and a majority of other members of the school-based standing panel, that designed such plan agree in writing to such plan.

'(7) EXTENSION OF PLAN- If a public school within the jurisdiction of a local educational agency meets the applicable requirements and criteria described in paragraphs (3) and (4) at the expiration of the 3-year approval period described in paragraph (6)(B), such agency may approve a school-based improvement plan of such school for an additional 3-year period.

'(h) DIRECT SERVICES BY THE STATE EDUCATIONAL AGENCY-

'(1) IN GENERAL- A State educational agency shall use the payments that would otherwise have been available to a local educational agency or to a State agency to provide special education and related services directly to children with disabilities residing in the area served by that local agency, or for whom that State agency is responsible, if the State educational agency determines that the local education agency or State agency, as the case may be--

'(A) has not provided the information needed to establish the eligibility of such agency under this section;

'(B) is unable to establish and maintain programs of free appropriate public education that meet the requirements of subsection (a);

'(C) is unable or unwilling to be consolidated with one or more local educational agencies in order to establish and maintain such programs; or

'(D) has one or more children with disabilities who can best be served by a regional or State program or service-delivery system designed to meet the needs of such children.

'(2) MANNER AND LOCATION OF EDUCATION AND SERVICES- The State educational agency may provide special education and related services under paragraph (1) in such manner and at such locations (including regional or State centers) as the State agency considers appropriate. Such education and services shall be provided in accordance with this part.

'(i) STATE AGENCY ELIGIBILITY- Any State agency that desires to receive a subgrant for any fiscal year under section 611(g) shall demonstrate to the satisfaction of the State educational agency that--

'(1) all children with disabilities who are participating in programs and projects funded under this part receive a free appropriate public education, and that those children and their parents are provided all the rights and procedural safeguards described in this part; and

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'(2) the agency meets such other conditions of this section as the Secretary determines to be appropriate.

'(j) DISCIPLINARY INFORMATION- The State may require that a local educational agency include in the records of a child with a disability a statement of any current or previous disciplinary action that has been taken against the child and transmit such statement to the same extent that such disciplinary information is included in, and transmitted with, the student records of nondisabled children. The statement may include a description of any behavior engaged in by the child that required disciplinary action, a description of the disciplinary action taken, and any other information that is relevant to the safety of the child and other individuals involved with the child. If the State adopts such a policy, and the child transfers from one school to another, the transmission of any of the child's records must include both the child's current individualized education program and any such statement of current or previous disciplinary action that has been taken against the child.